

AUTONOMY AND FEDERATION  
WITHIN EMPIRE

THE BRITISH SELF-GOVERNING  
DOMINIONS

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE  
DIVISION OF INTERNATIONAL LAW  
PAMPHLET No. 33

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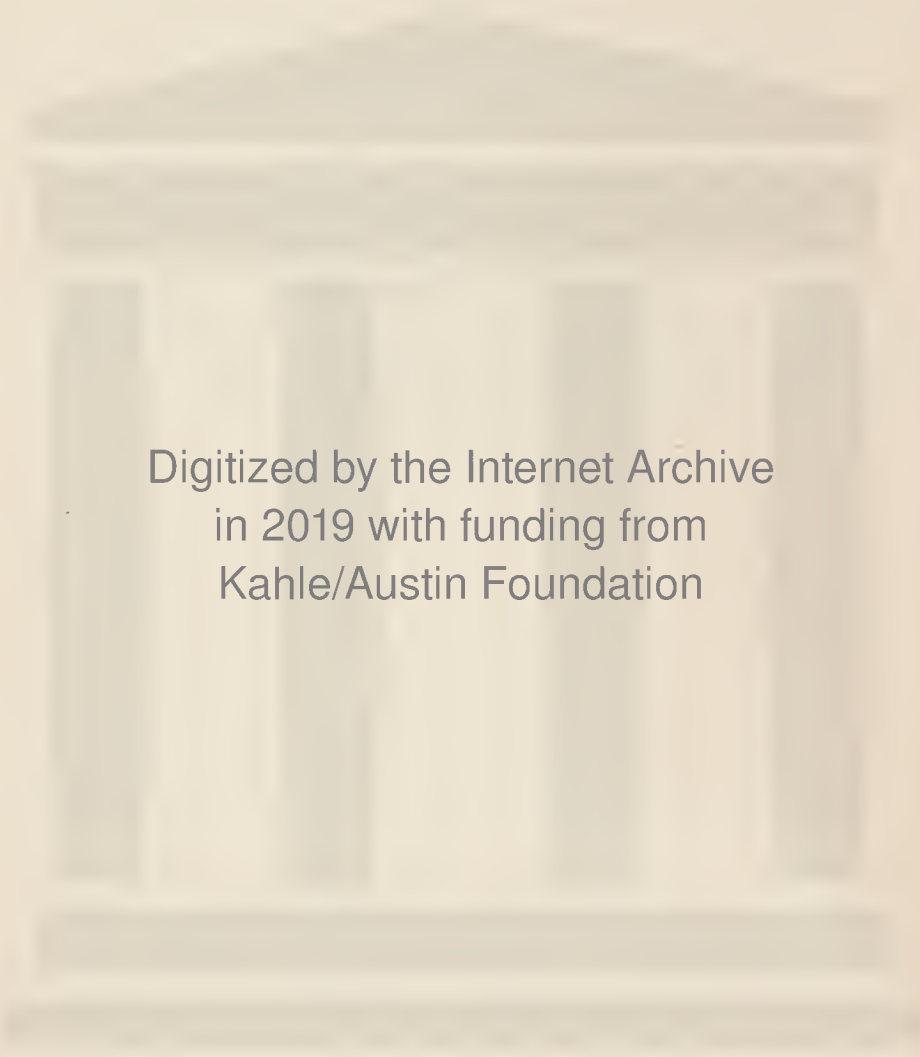
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# AUTONOMY AND FEDERATION WITHIN EMPIRE

## THE BRITISH SELF-GOVERNING DOMINIONS

PREPARED UNDER THE SUPERVISION OF

JAMES BROWN SCOTT

Director of the Division of International Law of the Carnegie Endowment  
for International Peace

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## PREFACE

WHILE the political experiences of other peoples might yield material of value for the student of the problem of autonomy within empire, it is safe to say that in no empire or kingdom has the evolution of the relation under examination been as consistent in time, uniform in its various local manifestations, deliberate in purpose and—as it now appears, in looking back over the process—as archetypical as it has been in the British imperial commonwealth. Hence it has seemed wise to confine the exhibits of evidence on this question to “the Dominions,” as recognized by that title and listed by name in 1914 in the British Nationality and Status of Aliens Act.

There is a wealth of material upon the political development of the Dominions to which a useful guide, to be described later, has been compiled but which in spite of all is rather cumbersome and uneven in its utility. A selection has therefore been made bearing upon the following points: the grant of local constitutions to single colonies by imperial statute, the erection of a system of ministerial responsibility upon the basis of the existing constitution in a single colony, the federation of groups of single colonies into unions under constitutions enacted by imperial statute (as well as the amendment of such constitutions by imperial legislation), constitutions which in all cases carried in their provisions that system of ministerial responsibility already obtaining in the colonies assembled in the larger union, and, finally, direct legislation by the imperial legislature for the Dominions—with certain degrees of option and freedom

reserved for them in the matters dealt with—and the amendment by local action in the Dominion of an imperial constitution. The texts of statutes are completely adequate for the purpose of the student in all of these cases except the most critical, namely, the granting of local ministerial responsibility. For the study of this phase of the process recourse must be had to colonial instructions and reports, and correspondence, often more or less personal and intimate, between the colonial governor and local politicians. It may be that the real nature of the transition—such as took place in Newfoundland and in New Zealand in 1855—eludes the form of written documents altogether.

The following table may serve to summarize the process by which the Dominions have come to enjoy self-government within the Mother Empire:

<i>Colony</i>	<i>Date of Grant of Ministerial Responsibility</i>
Ontario . . . . .	1839
Quebec . . . . .	1839
Nova Scotia . . . . .	1848
New Brunswick . . . . .	1848
Prince Edward Island . . . . .	1851
Victoria . . . . .	1855
New South Wales . . . . .	1855
Tasmania . . . . .	1855
South Australia . . . . .	1855
New Zealand . . . . .	1856
Queensland . . . . .	1859
Manitoba . . . . .	1870
British Columbia . . . . .	1871
Cape Colony . . . . .	1872

<i>Colony</i>	<i>Date of Grant of Ministerial Responsibility</i>
West Australia . . . . .	1890
Natal . . . . .	1893
Saskatchewan . . . . .	1905
Alberta . . . . .	1905
Transvaal . . . . .	1906
Orange Free State . . . . .	1907

The federations of colonies occurred as follows:

1. The five Provinces existing in continental Canada in 1867 were joined in a federal union by the British North America Act of that year. To this federation were added from time to time, out of territory already part of the Dominion, the four remaining North American Provinces in the foregoing list.
2. The six Australian Colonies of 1900 were united in a single federal Commonwealth.
3. The four autonomous South African Colonies of 1909 were placed in a Federal Union by the South Africa Act of that year.

Some suggestions regarding the literature of the field may be in place here. The history of the granting of constitutional and responsible governments in the provinces and colonies and of the process of federation may best be traced in the works of Mr. Arthur Berriedale Keith, at present the paramount authority in this field. The review provided in the first pages of Mr. Keith's *Responsible Government in the Dominions* (1909) is expanded in the first part of the first volume of the work by the same title issued three years later (not a second edition, however), and in the second volume under the sections dealing with



the various federal unions. The legal aspects of the question of imperial control are canvassed in the third volume of the latter work and in the first part of *Imperial Unity and the Dominions*, issued in 1916. The last work also contains a suggestive analysis of the problem in terms of imperial and international politics.

References are to be found in these works by Keith to much other useful literature, of which Brand's *Union of South Africa*, Lucas' edition of the Durham report, and Jenks' little historical work may be mentioned here. The work of Todd on *Parliamentary Government in the British Colonies* hardly needs to be named; it is, of course, of greatest interest upon one side of the question.

There is a great deal of material bearing indirectly upon the question in statutes enacted by colonial legislatures in execution of imperial statutes granting powers to these legislatures to do certain things, and in British imperial statutes dealing with intra-colonial affairs and non-political matters such as land legislation and boundaries; to this material an introduction may be found in Lefroy's *Canada's Federal System*.

The grants of responsible government and the erection of federations were preceded by other steps such as, on the one hand, the grant of representative institutions and of powers over land sales, customs and mining royalties, and, on the other, the passage (perhaps "negotiation" would describe the process better) of the Imperial Defence Act of 1888 and the gathering of the earlier Colonial Conferences or the Imperial Conferences of the present day. Upon the former the special works on Newfoundland and New Zealand may be consulted such as the somewhat unsatisfactory histories by Prowse, Hatton and Harvey, and Rusden; Jenks treats with full appreciation of their sig-



nificance the Land Sales Act of 1842 and similar measures. Upon the imperial colonial conferences down to 1911 and during the recent war in their relation to the movement for federation in the Empire and to the future of that mighty commonwealth of nations Jebb's *The Imperial Conference* (1911) and Keith's *Imperial Unity and the Dominions*, already mentioned, should be examined. For the history of the Conference since 1916 the newspaper reports will yield some results until better material is forthcoming. In view of the recognition accorded to the Dominions at the Conference of Paris regarding international affairs it may well be suggested that the process whereby the unity of empire and the individuality of colony are developed and reconciled is reaching its perfect conclusion at this present time; dependence, independence and interdependence, as between mother country and colony and between both and other nations, are being worked out in all their manifold phases in a most startling manner.

The following documents are not to be taken as giving a full or precise representation of the present political organisation of the Dominions, except as to the general outlines. For such a picture the student will need to take into account a multitude of regulations and instructions issued from time to time in the last eighty years as well as the great body of statute law and political custom and convention which has developed in the Dominions during the period of responsible self-government; it hardly needs to be said that in the British Dominions the latter factor may be counted as nearly equal to the statutes themselves in determining the ultimate form taken by the political organisation of the country. The following documents portray the way in which the more fundamental changes were made, historically, in the constitutional framework of the various Dominions and

the relations between these changes and what had gone before.

While the collection of documents was made under the supervision of the undersigned, the assembling and annotating of the material were done by Mr. Pitman B. Potter, of the Division of International Law.

JAMES BROWN SCOTT,

*Director of the Division of International Law.*

WASHINGTON, D. C.,

*March 25, 1919.*

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PART I  
NEWFOUNDLAND

## HISTORICAL RÉSUMÉ

For a long time Newfoundland was treated as a mere place of temporary lodgement for fishermen from Great Britain or her colonies and was administered or policed by officials appointed under statutes passed for that purpose. In the end, however, it was found impossible to prevent permanent settlements from growing up in the Island, and in 1832 the statutes were laid open to alteration by a local legislature should one be established, and the prerogative was used to set up an elementary form of representative government through a commission and instructions issued to the then Governor. A royal proclamation of even date announced the action which had been taken.

Changes were made in the constitution by statutes passed by the Imperial Parliament in 1842, 1846, and 1847, but the main outlines of the system remained the same until and even after the establishment of responsible government in 1854-55 by means of instructions to the Governor of the Colony and acts of the Legislature of Newfoundland.

AN ACT TO CONTINUE CERTAIN ACTS  
RELATING TO THE ISLAND  
OF NEWFOUNDLAND.

[2 & 3 William IV, cap. 78]

1832

*An Act to continue certain Acts relating to the Island of Newfoundland, and to provide for the appropriation of all duties which may hereafter be raised within the said Island.*

WHEREAS an Act was passed in the fifth year of the reign of his late Majesty King George the Fourth, entitled “An Act for the better administration of justice in Newfoundland, and for other purposes”; And whereas a certain other Act was passed in the said fifth year of his said late Majesty’s reign, entitled “An Act to repeal an Act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, entitled ‘An Act to regulate the celebration of marriages in Newfoundland, and to make further provision for the celebration of marriages in the said Colony and its dependencies’”: And whereas by an Act passed in the tenth year of his said late Majesty King George the Fourth the said Acts were continued in force until the thirty-first day of December one thousand eight hundred and thirty-two: And whereas it is expedient that the said Acts be further continued in force until the same shall be repealed, altered, or amended by any Act or Acts which may for that purpose be made by His Majesty, with the advice and consent of any house or houses of general assembly which His Majesty may at any time see fit to convoke within the said Colony of

Newfoundland; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for His Majesty, or for any Governor, Lieutenant Governor, or officer administering the government of Newfoundland, in pursuance of any commission or instructions to him for that purpose addressed by His Majesty, with the advice and consent of any house or houses of general assembly which His Majesty may hereafter be pleased to convoke from among the inhabitants of the said Colony, by any Act or Acts to be from time to time for that purpose passed, to repeal in whole or in part, or to amend, alter, or vary, the said recited Acts or any of them, or any part thereof; and that, until so repealed, amended, altered, or varied, the said recited Acts shall be and continue in full force and effect.

## COMMISSION ESTABLISHING REPRESENTATIVE GOVERNMENT IN NEWFOUNDLAND <sup>1</sup>

1832

WILLIAM the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to our trusty and well-beloved Sir Thomas John Cochrane, Knight, greeting: WHEREAS We did by Our letters patent, bearing date at Westminster, the 28th day of December, in the 1st year of Our reign, constitute and appoint you, the said Sir Thomas John Cochrane, to be Governor and Commander-in-Chief in and

<sup>1</sup> Commons Papers, 1831-32, vol. 32, No. 515.

over the Island of Newfoundland and territories within the limits therein described, as by the said recited letters patent, relation being thereunto had, may more fully and at large appear: Now know you, that We have revoked and determined, and by these presents do revoke and determine, the said recited letters patent, and every clause, article and thing therein contained: and further know you, that We, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Sir Thomas John Cochrane, of Our especial grace, certain knowledge and mere motion, have thought fit to constitute and appoint you, the said Sir Thomas John Cochrane, to be Our Governor and Commander-in-Chief in and over Our Island of Newfoundland and the Islands adjacent, and all the coast of Labrador, from the entrance of Hudson's Straits to a line to be drawn due north and south from Ana Sablon on the said Coast, to the 52d degree of north latitude, and all the Islands adjacent to that part of the said coast of Labrador, as also of all forts and garrisons erected and established, or to be erected and established, in the said Island of Newfoundland and the islands adjacent, or on the coast of Labrador within the limits aforesaid, or in the said islands adjacent to that part of the said coast, for and during Our will and pleasure.

And We do hereby require and command you to do and execute all things in due manner that shall belong unto your said command and the trust We have reposed in you, according to the several powers and authorities granted or appointed you by this present commission and the instructions herewith given you, or according to such further powers, directions and authorities as shall at any time hereafter be granted or appointed you under Our sign manual and signet, or by Our order in Our Privy



Council, or by Us, through one of Our principal Secretaries of State, and according to such reasonable laws and statutes as shall hereafter be made and agreed upon by you with the advice and consent of the Council and Assembly of Our said Island and its dependencies under your government, when such Assembly shall be called.

And Our will and pleasure is, that you, the said Sir Thomas John Cochrane, after the publication of these Our letters patent, do take the oaths appointed to be taken by an Act passed in the 1st year of the reign of King George the First, entitled, "An Act for the further security of His Majesty's person and government and the succession of the Crown in the heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors," as altered and explained by an Act passed in the 6th year of the reign of King George the Third, entitled, "An Act for altering the oath of adjuration and the assurance, and for amending so much of an Act of the 7th year of her late Majesty Queen Anne, entitled, "An Act for the improvement of the union of the two Kingdoms, as after the time therein limited requires the delivery of certain lists and copies therein mentioned to persons indicted of high treason or misprison of treason," or in lieu thereof the oath required to be taken by an Act passed in the 10th year of the reign of his late Majesty, entitled, "An Act for the relief of His Majesty's Roman Catholic subjects," according as the said former Acts or the said last mentioned Act shall be applicable to your case; and likewise that you take the usual oath for the due execution of the office and trust of our Government and Commander-in-Chief in and over Our said Islands and territories, and for the due and impartial

administration of justice; and further, that you take the oath required to be taken by Governors of Plantations, to do their utmost that the several laws relating to trade and the plantations be duly observed; which oaths Our Council of Our said Island and its dependencies, or any three of the members thereof, have hereby full power and authority and are required to tender and administer unto you, and in your absence to Our Lieutenant Governor, if there be one on the place; all which being duly performed, you shall administer to each of the members of Our said Council such of the said oaths mentioned in the said several Acts as shall be applicable to the case of the individual Member of Our said Council taking the same and you are also to administer to them the usual oath for the due execution of their places and trust respectively; all which oaths shall also be administered by the Governor or person administering the government of Our said Island and its Dependencies for the time being, to all such persons as shall hereafter be appointed to be of Our said Council, before they respectively enter upon the execution of the duties of such their offices.

And We do hereby give and grant unto you full power and authority to suspend any of the members of Our said Council from sitting, voting and assisting therein, if you shall find just cause for so doing; and if it shall at any time happen that by the death, departure out of Our said Island and its dependencies, suspension of any of Our said Councillors, or otherwise, there shall be a vacancy in Our said Council, any three of whom We do hereby appoint to be a quorum. Our will and pleasure is that you signify the same unto Us by the first opportunity, that We may, under Our signet and sign manual, constitute and appoint others in their stead: but that Our

affairs at that distance may not suffer for want of a due number of Councillors, if ever it shall happen that there be less than seven of them residing in Our said Island and its dependencies, We do hereby give and grant unto you, the said Sir Thomas John Cochrane, full power and authority to choose as many persons out of the principal freeholders, inhabitants of Our said Island and its dependencies, as will make up the number of Our Council to be seven, and no more, which persons so chosen and appointed by you shall be to all intents and purposes Councillors for Our said Island and its dependencies until either they are confirmed by Us, or that by the nomination of others by Us under Our sign manual and signet, Our said Council shall have seven or more persons in it.

And We do hereby give and grant unto you full power and authority, with the advice and consent of Our said Council, from time to time as need shall require, to summon and call general assemblies of the freeholders and householders within the said Island and its dependencies under your government, in such manner and form, and according to such powers, instructions and authorities as are granted or appointed by your general instructions accompanying this your commission, or according to such further powers, instructions and authorities as shall be at any time hereafter granted or appointed under Our sign manual and signet, or by Our order in Our Privy Council; and Our will and pleasure is, that the persons thereupon duly elected by the major part of the freeholders and householders of the respective towns or districts, and so returned, shall before their sitting take such of the oaths mentioned in the said several Acts as shall be applicable to the case of the individual taking the same, which oaths you shall commission fit persons, under the seal of Our



said Island and its dependencies, to tender and administer unto them; and until the same shall be so taken, no person shall be capable of sitting, though elected: and We do hereby declare that the persons so elected and qualified shall be called and deemed the General Assembly of Our said Island of Newfoundland, and you the said Sir Thomas John Cochrane, by and with the advice and consent of Our said Council and Assembly, or the major part of them respectively, shall have full power and authority to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of Our said Island and its dependencies, and the people and inhabitants thereof, and such others as shall resort thereto, and for the benefit of Us, our heirs and successors, which said laws, statutes and ordinances are not to be repugnant, but as near as may be agreeable, to the laws and statutes of this Our United Kingdom of Great Britain and Ireland.

Provided that all such laws, statutes and ordinances, of what nature or duration soever, be, within three months or sooner after the making thereof, transmitted to Us, under the public seal of Our said Island and its dependencies, for Our approbation or disallowance of the same, as also duplicates thereof, by the next conveyance. And in case any or all of the laws, statutes and ordinances not before confirmed by Us shall at any time be disallowed and not approved, and so signified by us, Our heirs or successors, under Our or their sign manual and signet, or by order of Our or their Privy Council unto you, the said Sir Thomas John Cochrane, or the Commander-in-Chief of Our said Island for the time being, then such and so many of the said laws, statutes and ordinances as shall be so disallowed and not approved shall from thenceforth

cease, determine and become utterly void and of none effect, anything to the contrary thereof notwithstanding. And to the end that nothing may be passed or done by Our said Council and Assembly to the prejudice of Us, Our heirs or successors, We will and ordain that you, the said Sir Thomas John Cochrane, shall have and enjoy a negative voice in the making and passing such laws, statutes and ordinances as aforesaid, and that you, or, in your absence, the officer administering the Government, shall and may from time to time, as you or he shall judge it necessary, adjourn, prorogue or dissolve all general assemblies as aforesaid.

And We do hereby authorize and empower you to keep and use the public seal for sealing all things whatsoever that shall pass the seal of Our said Island and its dependencies. And We do further give and grant unto you, the said Sir Thomas John Cochrane, full power and authority from time to time, and at any time hereafter, by yourself, or by any other to be authorized by you in that behalf, to administer and give such of the said oaths in the said several Acts contained as shall be applicable to the case of the individual to whom the same shall be administered, to all and every such person or persons as you shall think fit who shall hold any office or place of trust or profit, or who shall at any time or times pass into Our said Island and its dependencies, or shall be resident or abiding therein.

And We do by these presents give and grant unto you, the said Sir Thomas John Cochrane, full power and authority, with the advice and consent of Our said Council, to constitute and appoint, in cases requisite, Commissioners of Oyer and Terminer, Justices of the Peace, Sheriffs, and other necessary officers and ministers in Our said Island

and its dependencies, for the better administration of justice, and putting the said laws into execution, and to administer, or cause to be administered, unto them such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes. And we do hereby give and grant unto you full power and authority, where you shall see cause or judge any offender or offenders in criminal matters, or for any fines or forfeitures due unto Us, fit objects of Our mercy, to pardon all such offenders, and to remit all such offences, fines and forfeitures, (treason and wilful murder only excepted), in which cases you shall likewise have power upon extraordinary occasions to grant reprieves unto the offenders, until and to the intent Our royal pleasure may be known therein.

And We do by these presents authorize and empower you to present to the Bishop of the Diocese of Nova Scotia for institution any person or persons to and churches, chapels, or other ecclesiastical benefices within Our said Island and its dependencies as often as any of them shall happen to be void.

And We do hereby give and grant unto you, the said Sir Thomas John Cochrane, by yourself, or by your captains and commanders by you to be authorized, full power and authority to levy, arm, muster, command and employ all persons whatsoever, residing within Our said Island and its dependencies, and as occasion shall serve, them to march from one place to another, or to embark them for the resisting and withstanding of all enemies, pirates and rebels, both at sea and land, and to transport such forces to any of Our plantations in America, if necessity shall require, for the defence of the same against the invasion or attempt of any of our enemies, and such enemies,

pirates and rebels, if there shall be occasion, to pursue and prosecute in or out of the limits of Our said Island and its dependencies, or any of them, and if it shall so please God them to vanquish, apprehend and take, and to execute martial law in the time of invasion, war, or other times when by law it may be executed, and to do and execute all and every other thing and things which to Our Governor and Commander-in-Chief doth and ought of right to belong. And We do hereby give and grant unto you full power and authority, by and with the advice and consent of Our said Council, to erect, constitute and establish in Our said Island and its dependencies, such and so many counties, townships, parishes, cities, boroughs and towns, as you, by the advice aforesaid, shall judge necessary.

And forasmuch as divers mutinies and disorders may happen by persons shipped and employed at sea during the time of war, and to the end that such as shall be shipped and employed at sea during the time of war may be better governed and ordered, We do hereby give and grant unto you, the said Sir Thomas John Cochrane, full power and authority to constitute and appoint captains, lieutenants, masters of ships, and other commanders and officers, and to grant unto such captains, lieutenants, masters of ships, and other commanders and officers, commissions to execute the law martial during the time of war, according to the directions of an Act passed in the twenty-second year of the reign of King George the Second, entitled, "An Act for amending, explaining and reducing into one Act of Parliament the laws relating to the Government of His Majesty's ships, vessels, and forces by sea," as the same is altered by an Act passed in the nineteenth year of the reign of King George the Third, entitled, "An Act to explain and amend an Act made in the twenty-second year



of the reign of His late Majesty King George the Second, entitled, “ An Act for amending, explaining, and reducing into one Act of Parliament the laws relating to the Government of His Majesty’s ships, vessels, and forces by sea,” and to use such proceedings, authorities, punishments, corrections, and executions upon any offender or offenders who shall be mutinous, seditious, disorderly, or anyways unruly, either at sea or during the time of their abode or residence in any of the ports, harbors or bays of Our said Island and its dependencies, as the case shall be found to require, according to martial law, and the said directions during the time of war, as aforesaid; Provided that nothing herein contained shall be construed to the enabling you, or any by your authority, to hold plea, or have any jurisdiction of any offence, cause, matter or thing committed or done upon the high seas, or within any of the havens, rivers or creeks of Our said Island and its dependencies under your government, by any captain, commander, lieutenant, master, officer, seaman, soldier or other person whatsoever, who shall be in actual service or pay in or on board any of our ships of war or other vessels acting by immediate commission or warrant from Our Commissioners for executing the office of High Admiral of Our United Kingdom of Great Britain and Ireland, or from Our High Admiral of Our United Kingdom of Great Britain and Ireland for the time being, under the seal of Our Admiralty, but that such captain, commander, lieutenant, master, officer, seaman, soldier or other person so offending shall be left to be proceeded against and tried as their offences shall require, either by commission under Our great seal of this Kingdom as the statute of the twenty-eighth of King Henry the Eighth directs, or by commission from Our said Commissioners for executing

the office of High Admiral of Our United Kingdom of Great Britain and Ireland, or from Our High Admiral of Our United Kingdom of Great Britain and Ireland for the time being, according to the aforementioned Act, passed in the twenty-second year of the reign of King George the Second, as altered by the said Act passed in the nineteenth year of the reign of King George the Third; Provided nevertheless, that all disorders and misdemeanors committed on shore by any captain, commander, lieutenant, master, officer, seaman, soldier, or other person whatsoever, belonging to any of Our ships of war, or other vessels acting by immediate commission or warrant from Our Commissioners for executing the office of High Admiral of Our United Kingdom of Great Britain and Ireland, or from Our High Admiral of Our United Kingdom of Great Britain and Ireland for the time being, under the seal of Our Admiralty, may be tried and punished according to the laws of the place where such offences, disorders, and misdemeanors shall be committed on shore, notwithstanding such offender be in our actual service, and borne in Our pay on board any such Our ships of war or other vessels acting by immediate commission or warrant from Our Commissioners for executing the office of High Admiral of Our United Kingdom of Great Britain and Ireland, or from Our High Admiral of Our United Kingdom of Great Britain and Ireland for the time being as aforesaid, so as he shall not receive any protection for the avoiding of justice for such offences committed on shore, from any pretence of his being employed in Our service at sea.

And Our further will and pleasure is, that all public monies raised, or which shall be raised by any Act hereafter to be made within Our said Island and its de-

pendencies, be issued out by warrant from you, by and with the advice and consent of the aforesaid Council (and not otherwise), and disposed of by you for the support of the Government, or for such other purpose as shall be particularly directed or appointed in and by such Act, and not otherwise; And We do likewise give and grant unto you full power and authority, by and with the advice and consent of Our said Council, to settle and agree with the inhabitants of Our said Island and its dependencies for such lands, tenements and hereditaments as are now, or hereafter shall be, in Our power, to dispose of, and them to grant, to any person or persons, upon such terms, and under such moderate quit-rents, services and acknowledgements to be thereupon reserved to Us, as you or they, by the advice aforesaid, shall think fit, which said grants are to pass and be sealed by Our public seal of Our said Island and its dependencies, and being entered upon record by such officer or officers as shall be appointed thereunto, shall be good and effectual in law against Us, Our heirs and successors. And We do hereby give you the said Sir Thomas John Cochrane full power and authority to order and appoint fairs, marts and markets, as also such and so many ports, harbors, bays, havens and other places for the conveniency and security of shipping, and for the better loading and unloading of ships and merchandizes, in such and so many places as by and with the advice and consent of Our said Council shall be thought fit and necessary.

And We do hereby require and command all officers and ministers, civil and military, and all others the inhabitants of Our said Island and its dependencies, to be obedient, aiding and assisting unto you the said Sir Thomas John Cochrane in the execution of this Our commission, and

of the powers and authorities herein contained; and in case of your death or absence out of Our said Island and its dependencies and government, to be obedient, aiding and assisting as aforesaid unto such person as shall be appointed by Us to be Our Lieutenant Governor, or to the Commander-in-Chief for the time being of Our said Island and its dependencies, to whom We do therefore, by these presents, give and grant all and singular the powers and authorities herein granted, to be by him executed and enjoyed during Our pleasure, or until your arrival within Our said Island and its dependencies; and if upon your death or absence out of Our said Island and its dependencies there be no person on the place commissioned or appointed by Us to be Our Lieutenant Governor, or specially appointed by Us to administer the government within Our said Island and its dependencies, Our will and pleasure is, that the Councillor whose name is first placed in Our instructions to you, unless it shall therein be otherwise directed, and who shall be at the time of your death or absence residing within Our said Island and its dependencies, shall take upon him the administration of the government, and execute Our said commission and instructions, and the several powers and authorities therein contained, in the same manner to all intents and purposes as other Our Governor or Commander-in-Chief should or ought to do, in case of your absence, or until your return, or in all cases until Our further pleasure be known thereon; and We do hereby declare, ordain and appoint that you, the said Sir Thomas John Cochrane, shall and may hold, execute and enjoy, the office and place of Our Governor and Commander-in-Chief in and over the Island and territories aforesaid, together with all and singular the powers and authorities hereby granted unto you, for and during Our will and pleasure.



ROYAL INSTRUCTIONS FOR ESTABLISHING  
REPRESENTATIVE GOVERNMENT <sup>1</sup>

July 26, 1832

*Instructions to Our trusty and well-beloved Sir Thomas John Cochrane, Knight, Our Governor and Commander-in-Chief of Our Island of Newfoundland, or in his absence to the Lieutenant Governor or officer administering the Government of Our said Island for the time being. Given at Our Court at St. James's, the 26th day of July 1832, in the third year of Our reign.*

1. With these Our instructions you will receive Our Commission under Our great seal of the United Kingdom of Great Britain and Ireland constituting you Our Governor and Commander-in-Chief in and over Our said Island of Newfoundland and its dependencies. You are therefore with all convenient speed to assume and enter upon the execution of the trust We have reposed in you. And you are forthwith to call together the following persons, whom We do hereby appoint to be members of Our Council in Our said Island, any three of whom to be a quorum: viz. the Chief Justice for the time being of Our said Island; the Chief Officer in command of Our land forces for the time being in Our said Island next after Our Governor thereof for the time being; the Attorney General for the time being of Our said Island; the Collector or other Chief Officer of Customs for the time being of Our said Island; the Colonial Secretary for the time being of Our said Island, and William Haly, Esquire.

2. And you are with all due and usual solemnity to

<sup>1</sup> Commons Papers, 1831-32, vol. 32, No. 704, p. 5.

cause Our said commission, constituting you Our Governor and Commander-in-Chief as aforesaid, to be read and published at the first meeting of Our said Council, and shall then take, and also administer to each of the members thereof, the several oaths therein required.

3. You shall administer or cause to be administered the several oaths mentioned in Our said commission to all judges, justices, and other persons who hold any place of trust or profit in Our said Island, without the doing of which you are not to admit any person whatsoever into any public office, nor suffer those who may have already been admitted to continue therein.

4. You are to communicate forthwith such of these Our instructions to Our said Council, wherein their advice and consent are mentioned to be requisite, and likewise all such others from time to time as you shall find convenient for Our service to be imparted to them.

5. You are to permit the members of Our said Council to have and enjoy freedom of debate, and vote in all affairs of public concern that may be submitted to their consideration in Council.

6. And that we may be always informed of the names and characters of persons fit to supply the vacancies in Our said Council, you are from time to time, when ever any vacancy shall happen therein, forthwith to transmit unto Us, through one of Our principal Secretaries of State, the names of three persons, inhabitants of the said Island, whom you shall esteem the best qualified for the trust.

7. And whereas by Our commission you are empowered in case of the death or absence of any of the members of Our said Council to fill up the vacancies therein to the number of three, and no more, you are therefore from time to time to send to Us, through one of Our principal

Secretaries of State, the names and qualifications of any members by you put into Our said Council by the first opportunity after so doing.

8. And in the choice and nomination of the members of Our said Council, as also of the judges, justices, and other officers, you are always to take care that they be men of good life, well affected to Our Government, of good estates, and abilities suitable to their employments.

9. You are neither to augment nor diminish the number of the members of Our said Council as already established, nor to suspend any of them without good and sufficient cause, nor without the consent of the majority of the said Council, signified in Council after due examination of the charge against such Councillor, and his answer thereunto; and in case of the suspension of any of them you are to cause your reasons for so doing, together with the charges and proofs against such Councillor, and his answer thereunto, to be duly entered upon the council-book, and forthwith to transmit copies to Us, through one of Our principal Secretaries of State. Nevertheless, if it should happen that you should have reasons for suspending any of the members of Our said Council, not fit to be communicated to Our said Council, you may in that case suspend such member without their consent. But you are thereupon immediately to send to Us, through one of Our principal Secretaries of State, an account of your proceedings therein, together with your reasons at large for such suspension, and also your reasons for not communicating the same to Our Council.

10. And whereas effectual care ought to be taken to oblige the members of Our said Council to a due attendance therein, and thereby to prevent the inconveniences that may happen from the want of a quorum to transact

business as occasion may require, it is Our will and pleasure that if any of the members of Our said Council shall hereafter absent themselves from the said Island, and continue absent above the space of six months together without leave from you or Our Commander-in-Chief for the time being first obtained under your or his hand or seal, or shall remain absent for the space of two years successively without leave given them under Our Royal sign manual and signet, their place or places in the said Council shall immediately thereupon become void; and that if any of the members of Our said Council then residing within Our said Island shall hereafter absent themselves when duly summoned without a sufficient cause, and shall persist in such absence after being thereof admonished by you, you suspend the said Councillors so absenting themselves till Our further will and pleasure therein be known, giving immediate notice thereof to Us, through one of Our principal Secretaries of State: And we do hereby will and require that Our royal pleasure be signified to the members of Our said Council and entered in the council-book as a standing rule.

11. And whereas by Our aforesaid commission you are authorized and empowered to summon and call general assemblies of the freeholders and householders within Our said Island, in such manner and form, and according to such powers, instructions and authorities as are granted or appointed by these Our instructions in that behalf, you are therefore, for the purpose of electing the members of such assemblies, hereby authorized to issue a proclamation dividing Our said Island in districts or counties, towns or townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each of such districts or counties, towns or



townships respectively, and from time to time to nominate and appoint proper persons to execute the office of returning officer in each of the said districts or counties, town or townships; and you are, so soon as you shall see expedient, to issue writs in Our name, directed to the proper officers in each district or county, town or township, directing them to summon the freeholders and householders thereof to proceed to the election of persons to represent them in the General Assembly according to the regulations and directions to be signified in the proclamation to be issued by you as aforesaid.

12. You are to observe in the passing of all laws, that the style of enacting the same be by the Governor, Council, and Assembly.

13. And We do hereby require and command that you do not, on any pretence whatever, give your assent to any law or laws to be passed by which the number of the Assembly shall be enlarged or diminished, the duration ascertained, the qualifications of the electors or the elected fixed or altered, or by which any regulations shall be established with respect thereto, until you shall have first transmitted unto Us, through one of Our principal secretaries of State, the draft of such bill or bills, and shall have received Our royal pleasure thereupon, unless you take care in the passing such bill or bills that a clause or clauses be inserted therein suspending and deferring the execution thereof until Our will and pleasure shall be known thereupon.

14. And you shall not reenact any law to which the assent of Us or Our royal predecessors has once been refused, without express leave for that purpose first obtained from Us, upon a full representation by you, to be made to Us, through one of Our principal Secretaries of

State, of the reason and necessity for reenacting such law.

15. And it is Our express will and pleasure, that no law for constituting any court or courts of judicature, or for establishing the militia, shall be a temporary law; and that no law for granting unto Us any sum or sums of money by duties of impost, tonnage, or excise, be made to continue for less than one whole year; as also that no other laws whatsoever be made to continue for less than two years, except only in cases where it may be necessary for some unforeseen emergency to make provision by law for a service in its nature temporary and contingent.

16. You are also, as much as possible, to observe in the passing of all laws, that each different matter be provided for by a different law, without intermixing in one and the same Act such things as have no proper relation to each other; and you are more especially to take care that no clause or clauses be inserted in, or annexed to, any Act which shall be foreign to what the title of such respective Act imports; and that no perpetual clause be part of any temporary law; and that no Act whatever be suspended, altered, continued, revived, or repealed by general words, but that the title and date of such Act so suspended, altered, continued, revived, or repealed, be particularly mentioned and expressed in the enacting part.

17. And you are particularly enjoined not to pass any law, or do any act, by grant, deed, conveyance, or otherwise, whereby Our revenue may be lessened or impaired without Our especial leave or command thereon.

18. It is Our will and pleasure that you do not give your assent to any bill or bills for raising money by the institution of any public or private lotteries whatsoever until you shall have first transmitted unto Us, through one



of Our principal Secretaries of State, a draft or drafts of such bill or bills, and shall have received Our directions thereupon.

19. It is Our will and pleasure that you do not, on any pretence whatever, give your assent to, or pass any bill or bills in Our Island under your government, by which the lands, tenements, goods, chattels, rights and credits of persons who have never resided within Our said Island, shall be liable to be seized or taken in execution for the recovery of debts due from such person, otherwise than is allowed by law in cases of a like nature within Our realm of England, until you shall have first transmitted unto Us, through one of Our principal Secretaries of State, the draft of such bill or bills, and shall have received Our royal pleasure thereupon, unless you take care, in the passing of such bill or bills, that a clause or clauses be inserted therein, suspending and deferring the execution thereof until Our royal will and pleasure shall be known thereupon.

20. It is Our further will and pleasure that you do not, upon any pretence whatsoever, give your assent to any bill or bills that may have been or shall hereafter be passed by the Council and Assembly of the Island under your government for the naturalization of aliens, nor for the divorce of persons joined together in holy matrimony, nor for establishing a title in any person to lands, tenements, and real estates in Our said Island, originally granted to or purchased by aliens antecedent to naturalization.

21. Whereas great mischiefs have arisen by the frequent passing of bills of an unusual and extraordinary nature and importance in the plantations, which bills remain in force there, from the time of enacting, until Our pleasure be signified to the contrary, We do hereby will and re-

quire you not to pass or give your assent to any bill or bills passed in the Assembly of an unusual and extraordinary nature and importance, whereby Our prerogative or the property of Our subjects may be prejudiced, nor to any bill or bills whereby the trade or shipping of this kingdom shall be in anywise affected, until you shall have first transmitted unto Us, through one of Our principal Secretaries of State, a draft of such bill or bills, and shall have received Our royal pleasure thereupon, unless you take care in the passing any such bills as aforementioned that there be a clause inserted therein, suspending and deferring the execution thereof until Our pleasure shall be known concerning the same.

22. You are also to take care that no private Act be passed, whereby the property of any private person may be affected, in which there is not a saving of the right of Us, Our heirs and successors, all bodies politic and corporate, and of all other, except such as are mentioned in the said Act, and those claiming by, from, and under them; and further, you shall take care that no such private Act be passed without a clause suspending the execution thereof until the same shall have received Our royal approbation. It is likewise Our will and pleasure that you do not give your assent to any private Act until proof be made before you in Council, and entered in the council-book, that public notification was made of the parties' intention to apply for such an Act in the several parish churches where the premises in question lie, for three Sundays at least successively, before any such Act shall be brought into the Assembly, and that a certificate, under your hand, be transmitted with, and annexed to every such private Act, signifying that the same has passed through all the forms above mentioned.

23. You are to take care that in all Acts or Orders to be passed within Our said Island, in any case for levying money or imposing fines and penalties, express mention be made that the same is granted or reserved to Us, Our heirs and successors, for the public uses of the said Island, and the support of the government thereof, as by the said Act or Order shall be directed.

24. You are not to suffer any public money whatsoever, whether it be appropriated to any particular service or not by the Act granting the same, to be issued or disposed of otherwise than by warrant under your hand, by and with the consent of the said Council. But the Assembly may nevertheless be permitted from time to time to view and examine the accounts of money or value of money disposed of by virtue of laws made by them, as there shall be occasion.

25. You are not to permit any clause whatsoever to be inserted in any law for levying of money, or the value of money, whereby the same shall not be made liable to be accounted for unto Us, here in this Kingdom, and to Our Commissioners of Our Treasury, or Our High Treasurer for the time being; and we do particularly require and enjoin you, upon pain of Our highest displeasure, to take care that fair books of accounts of all receipts and payments of all such money be duly kept, and copies thereof be transmitted to Our Commissioners of Our Treasury, or to Our High Treasurer for the time being, and in which books shall be specified every particular sum raised or disposed of, together with the names of the persons to whom any payment shall be made, to the end We may be satisfied of the right and due application of the revenue of Our said Island, with the probability of the increase and diminution of it, under every head and article thereof.

26. It is Our will and pleasure that you do in all things conform yourself to the provisions contained in an Act of Parliament passed in the fourth year of the reign of his late Majesty King George the Third, entitled, "An Act to prevent paper bills of credit hereafter to be issued in any of His Majesty's Colonies or Plantations in America from being declared to be a legal tender in payment of money, and to prevent the legal tender of such bills as are now subsisting from being prolonged beyond the periods limited for recalling in and sinking the same;" and also of an Act passed in the thirteenth year of the reign of his late Majesty to explain and amend the above-recited Act passed in the fourth year of his reign as aforesaid; and you are not to give your assent to, or pass any Act whereby bills of credit may be struck or issued in lieu of money, or for payment of money, either to you, Our Governor, or to any person whatsoever, unless a clause be inserted in such Act, declaring that the same shall not take effect until the said Act shall have been approved and confirmed by Us, Our heirs or successors.

27. You are to transmit an authenticated and separate copy of every law, statute or ordinance that at any time hereafter shall be made or enacted within the Island under your government, under the public seal, unto Us, through one of Our principal Secretaries of State, within three months, or sooner, after their being enacted, upon pain of Our highest displeasure, and of the forfeiture of that year's salary wherein you shall omit to send over the said laws, statutes and ordinances as aforesaid, within the time above mentioned, as also of such other penalty as We shall please to inflict; but if it shall happen that no shipping shall come from Our said island within three months after the making such laws, statutes and ordi-



nances, the same are to be transmitted by the next conveyance after the making thereof, whenever it may happen, for Our approbation or disallowance of the same.

28. And it is Our further will and pleasure that the copies and duplicates of all Acts that shall be transmitted as aforesaid be fairly abstracted in the margents, and there be inserted the several dates or respective times when the same passed the Council and Assembly, and received your assent; and you are to be as-particular as may be in your observations, to be sent to us through one of Our principal Secretaries of State, upon every Act; that is to say, whether the same is introductive of a new law, declaratory of a former law, or does repeal a law then before in being, and you are likewise to send to Us, through one of Our principal Secretaries of State, the reasons for the passing of such laws, unless the same do fully appear in the preambles of the said Acts.

29. You are to require the Secretary of the Island under your government, or his deputy for the time being, to furnish you with transcripts of all such Acts and Public Orders as shall be made from time to time, together with copies of the journals of the Council, and that all such copies be fairly abstracted in the margents, to the end the same may be transmitted to Us, through one of Our principal Secretaries of State, which he is duly to perform upon pain of incurring the forfeiture of his office.

30. You are also to require from the clerk of the Assembly of the said Island, or other proper officer, transcripts of all the journals and other proceedings of the said Assembly, and that all such transcripts be fairly abstracted in the margents, to the end the same may in like manner be transmitted as aforesaid.

31. You shall not appoint any person to be a judge or justice of the peace without the advice and consent of the majority of the Council of Our said Island, signified in Council. And it is Our further will and pleasure that all commissions to be granted by you to any person or persons to be judges, justices of the peace, or other necessary officers, be granted during pleasure only.

32. You shall not suspend any of the judges, justices, or other officers or ministers, without good and sufficient cause, which you shall signify in the fullest and most distinct manner to us, through one of Our principal Secretaries of State.

33. It being of the greatest importance to Our service, and to the welfare of Our subjects, that justice be everywhere speedily and duly administered, and that all disorders, delays, and other undue practices in the administration thereof, be effectually prevented, We do particularly require you to take especial care that in all courts where you are authorized to preside justice be impartially administered; and that in all other courts established within Our said Island, all judges and other persons therein concerned do likewise perform their several duties without any delay or partiality. You shall not erect any court or office of judicature not before erected or established, nor dissolve any court or office already erected or established without Our especial order.

34. You are, for the better administration of justice, to endeavor to get a law passed in Our said Island, wherein shall be set the value of men's estates, either in goods or lands, under which they shall not be capable of serving as jurors.

35. You are to take care that all writs be issued in Our name throughout Our said Island under your government.



36. Whereas, in pursuance of an Act passed in the 5th year of the reign of his late Majesty, King George the Fourth, entitled, "An Act for the better administration of justice in Newfoundland, and for other purposes," by Our charter or letters patent, issued under the great seal of the United Kingdom of Great Britain and Ireland, a supreme court of jurisdiction, called the "Supreme Court of Newfoundland," was erected and established in Our said Island, with certain powers and authorities, and under certain regulations therein specified, you are hereby required to take care that the same be duly complied with, and put in execution.

37. You are, with the advice and consent of Our Council, to take especial care to regulate all salaries and fees belonging to places, or paid upon emergencies, that they be within the bounds of moderation, and that no extortion be made on any occasion whatsoever, as also that tables of all fees be publicly hung up in all places where such fees are to be paid; and you are to transmit copies of all such tables of fees to Us, through one of Our principal Secretaries of State.

38. You shall not by color of any power or authority, hereby or otherwise granted or mentioned to be granted to you, take upon you to give, grant, or dispose of any office or place within Our said Island, which now is or shall be granted under the great seal of this Kingdom, or to which any person is or shall be appointed by warrant under Our sign manual and signet, any further than you may, upon the vacancy of any such office or place, or upon the suspension of any such officer by you, put in any fit person to officiate in the interim till you have represented the matter to Us, through one of Our principal Secretaries of State, which you are to do by the first oppor-

tunity, and have received our further directions therein.

39. You are to transmit unto Us, through one of Our principal Secretaries of State, with all convenient speed, a particular account of all establishments of jurisdictions, courts, offices and officers, powers, authorities, fees, and privileges, granted and settled, or which shall be granted and settled within Our said Island, as likewise an account of all the expenses attending the establishments of the said courts, and of such funds as are settled and appropriated to discharge the same.

40. It is Our express will and pleasure that you be at all times aiding and assisting unto the officers appointed for the managing, levying, collecting and receiving public revenues, and such duties and revenues as are or shall hereafter be laid and imposed within your government, and the seizures, forfeitures and arrears which shall accrue and grow due by reason thereof.

41. And whereas complaints have been made by the officers of Our Customs in Our plantations in America that they have been frequently obliged to serve on juries, and personally to appear in arms whensoever the militia is drawn out, and thereby are much hindered in the execution of their employments, Our will and pleasure is that you take effectual care, and give the necessary directions that the several officers of Our Customs be excused and exempted from serving on any juries, or personally appearing in arms in the militia, unless in case of absolute necessity, or serving any parochial offices which may hinder them in the execution of their duties.

42. And in case of the vacancy of the Collector, or any of Our officers of the Customs by death, removal, or otherwise, and in order that there may be no delay given on

occasion of such vacancy to the masters of ships or merchants in their despatch, you are hereby empowered, subject to such instructions as you shall receive from Our Commissioners of Our Treasury, or Our High Treasurer, or from the Commissioners of our Customs for the time being in this behalf, to appoint other persons duly qualified to execute such offices, until further directions shall be received from Our Commissioners of Our Treasury, or Our High Treasurer, to whom you are to give notice of such appointments by the first opportunity, taking care that you do not, under pretence of this instruction, interfere with the powers and authorities given to Our said Collector by Our Commissioners of Our Treasury, or Our High Treasurer, or by the Commissioners of Our Customs.

43. You shall not remit any fines or forfeitures whatever above the sum of 50 pounds, nor dispose of any forfeitures whatsoever until upon signifying unto Our Commissioners of Our Treasury, or Our High Treasurer for the time being, the nature of the offence and the occasion of such fines and forfeitures, with the particular sums or value thereof (which you are to do with all speed), you shall have received Our directions therein, but you may in the mean time suspend the payment of the said fines and forfeitures.

44. It is Our will and pleasure that you do not dispose of forfeitures or escheats to any persons until the Provost Marshal or other proper officer have made inquiries by a jury upon their oaths into the true value thereof, nor until you shall have transmitted to Our Commissioners of Our Treasury, or to Our High Treasurer for the time being, a particular account of such forfeitures and escheats and the value thereof, and shall have received Our directions thereupon, and you are to take care that the produce of

the said forfeitures and escheats, in case We shall think proper to give you direction to dispose of the same, be duly paid to the receiver of Our casual revenue; and that a full account thereof be transmitted to Our Commissioners of Our Treasury, or to Our High Treasurer for the time being, with the names of the persons to whom disposed of.

45. Whereas you will receive from Our Commissioners for executing the office of High Admiral a commission constituting you Vice Admiral of Our said Island, you are hereby required and directed carefully to put in execution the several powers thereby granted to you.

46. And whereas commissions have been granted in our colonies and plantations for trying pirates in those parts, pursuant to the Acts for the more effectual suppression of piracy, Our will and pleasure is, that in all matters relating to pirates you govern yourself according to the intent of the Acts before mentioned, and any commission you may receive in reference thereto.

47. And whereas there have been great irregularities in the matter of granting commissions to private ships of war, you are to govern yourself whenever there shall be occasion according to the commission and instructions granted in this Kingdom: but you are not to grant commissions of marque or reprisal against any prince or state or their subjects in amity with Us to any person whatsoever without Our special command.

48. Whereas We have thought it necessary for Our service to constitute and appoint a Receiver General of Our rights and perquisites of admiralty, it is therefore Our will and pleasure that you be aiding and assisting to the said Receiver General, his deputy or deputies, in the execution of the said office of Receiver General; and We do hereby en-



join and require you to make up your accounts with him, his deputy or deputies, of all such rights of admiralty (effects of pirates included) as you or your officers have received, or shall or may receive for the future, and to pay over to the said Receiver General, his deputy or deputies, for Our use, all such sum or sums of money as shall appear upon the foot of such accounts, to be and remain in your hands, or in the hands of any of your officers: And whereas Our said Receiver General is directed, in case the parties chargeable with any part of such Our revenue refuse, neglect, or delay payment thereof, by himself, or sufficient deputy, to apply in Our name to Our Governors, Judges, Attorney General or any other Our officers or magistrates, to be aiding or assisting to him in recovering the same, it is therefore Our will and pleasure that you, Our Governor, Our Judges, Our Attorney General, and all other officers whom it may concern, do use all lawful authority for the recovering and levying thereof.

49. And whereas by letters patent under the great seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the 10th day of May 1825, the Island of Newfoundland was constituted to be part of the see of the Bishop of Nova Scotia, and the said Bishop was thereby duly authorized to exercise jurisdiction, spiritual and ecclesiastical, in the said Colonies, it is Our will and pleasure that in the administration of the government of Our said Island you should be aiding and assisting to the said Bishop, and to his commissary or commissaries, in the execution of their charge, and the exercise of such ecclesiastical jurisdiction, excepting only the granting of licenses for marriages and probates of wills.

50. We do enjoin and require that you do take especial care that Almighty God be devoutly and truly served

throughout your government, the Book of Common Prayer, as by law established, read each Sunday and holiday, and the Blessed Sacrament administered according to the rites of the Church of England. You shall be careful that all orthodox churches already built there be well and orderly kept, and that more be built, as Our Island shall, by God's blessing, be improved. And that besides a competent maintenance to be assigned to the minister of each orthodox church, a convenient house be built at the common charge for each minister, and a competent portion of land for a glebe be allotted to him. And you are to take care that the parishes be so limited and settled as you shall find most convenient for the accomplishing this good work, and in all matters relating to the celebration of Divine Worship, the erection and repair of churches, the maintenance of ministers, and the settlement of parishes throughout your government, you are to advise with the Right Reverend Father in God the Bishop of Nova Scotia for the time being.

51. Upon the vacancy of any ecclesiastical benefice in Our said Island, you will present to the said Bishop of Nova Scotia for the time being, for institution to such vacant benefice, any clerk in holy orders of the United Church of England and Ireland, who shall have been actually resident within the said diocese, and officiating there as a clerk in holy orders, for six calendar months at the least next before such benefice shall have become vacant, whom the said bishop may certify to you to be a fit and proper person to fill such vacancy, and to be a person of good life and conversation, and conformable to the doctrine and discipline of the said United Church. But if at the time of any such vacancy occurring there shall not be resident within the said diocese any clerk in holy



orders of the said United Church who shall have been resident and officiating therein as aforesaid, in whose favor the said bishop shall think proper so to certify to you, or if no such certificate shall be received by you from the said bishop within three calendar months next after such vacancy shall occur, then and in either of such cases you shall forthwith report the circumstances to Us, through one of Our principal Secretaries of State, to the intent that We may nominate some fit and proper person, being a clerk in holy orders as aforesaid, to fill the said vacancy. And We do enjoin and command you to present to the said Bishop for institution to any such vacant ecclesiastical benefice, any clerk who may be so nominated by Us, through one of Our principal Secretaries of State.

52. You are to inquire whether there be any minister within your government who preaches and administers the Sacrament in any orthodox church or chapel, without being in due orders, and to give an account thereof to the said Bishop of Nova Scotia.

53. And whereas doubts have arisen whether the powers of granting licenses for marriages and probates of wills, commonly called the Office of Ordinary, which We have reserved to you, Our Governor, can be exercised by deputation from you to any other person within Our said Island under your government, it is Our express will and pleasure, and you are hereby directed and required not to grant deputations for the exercise of the said powers, commonly called the Office of Ordinary, to any person or persons whatsoever in Our said Island under your government.

54. And you are to take especial care that a table of marriages established by the canons of the Church of England be hung up in every orthodox church and duly observed.

55. The Right Reverend Father in God, Edmund, then Lord Bishop of London, having presented a petition to his Majesty King George the First, humbly beseeching him to send instructions to the governors of all the several colonies and plantations in America, that they cause all laws already made against blasphemy, profaneness, adultery, fornication, polygamy, incest, profanation of the Lord's day, swearing and drunkenness in their respective governments to be rigorously executed, and We, thinking it highly just that all persons who shall offend in any of the particulars aforesaid should be prosecuted and punished for their said offences, it is therefore Our will and pleasure that you take due care for the punishment of the afore-mentioned vices, and that you earnestly recommend that effectual laws be passed for the restraint and punishment of all such of the afore-mentioned vices against which no laws are as yet provided. And also you are to use your endeavors to render the laws in being more effectual, by providing for the punishment of the afore-mentioned vices, by presentment upon oath to be made to the temporal courts by the church-wardens of the several parishes, at proper times of the year to be appointed for that purpose; and for the further discouragement of vice and encouragement of virtue and good living, you are not to admit any persons to public trusts or employments in the Island under your government whose ill fame and conversation may occasion scandal.

56. It is Our further will and pleasure that you recommend to the Legislature to enter upon proper methods for the erecting and maintaining schools in order to the training up of youth to reading, and to a necessary knowledge of the principles of religion. You are not, however, to give your consent to any Act respecting religion without

a clause suspending its operation until Our pleasure shall have been signified thereupon, unless a draft thereof shall have been previously transmitted by you for Our consideration and approval.

57. And We do further direct that in all matters arising within your government connected with the education of youth in the principles of the Christian religion according to the doctrine of the said United Church of England, or connected with the prevention of vice and profaneness, or the conversion of negroes and other slaves, or connected with the worship of Almighty God, or the promotion of religion and virtue, you be advising with the Bishop for the time being of the said diocese of Nova Scotia, and be aiding him in the execution of all such designs and undertakings as may be recommended by the said Bishop for the promotion of any of the objects before mentioned, so far as such designs and undertakings may be consistent with the law and with your said commission, and these Our instructions.

58. You are to transmit to Us, through one of Our principal Secretaries of State, regular monthly returns of the militia of Our said island whenever and so long as the same shall be embodied, with a particular state of their arms and accoutrements; and for the due preservation and security of which you are to establish such regulations as you shall judge to be most effectual for that purpose.

59. You shall not upon any occasion whatsoever establish or put in execution any articles of war, or other law martial, upon any of Our subjects, inhabitants of Our said Island, without the advice and consent of Our Council.

60. And in case of any distress of any other of Our plantations, you shall, upon application of the respective Governors thereof unto you, assist them with what aid the

condition and safety of Our Island under your government can spare.

61. You shall, from time to time, give unto Us, through one of Our principal Secretaries of State, an account of the wants and defects of the Island under your government, what are the chief products thereof, what improvements have been lately made, and what further improvements you conceive may be made, or advantages gained by trade, and in what way We may contribute thereunto.

62. If any thing shall happen which may be of advantage or security to Our Island under your government, which is not herein or by Our commission provided for, We do hereby allow you, with the advice and consent of Our Council, to take orders for the present therein, giving unto Us, through one of Our principal Secretaries of State, speedy notice thereof, that so you may receive Our ratification, if We shall approve the same: Provided always, that you do not, under color of any power or authority hereby given to you, commence or declare war without Our knowledge and particular commands therein first obtained leave for so doing from Us, under Our sign manual and signet, or by Our order in Our Privy Council.

63. And whereas we have thought fit, by Our commission, to direct that in case of your death or absence, and there be at that time no person within Our said Island, commissioned or appointed by Us to be Lieutenant Governor, or specially appointed by Us to administer the government within Our said Island, that the Councillor whose name is first placed in Our instructions to you, (unless it shall therein be otherwise signified), and who shall be, at the time of your absence, residing within Our said Island, and who shall take the oaths appointed to be taken by you or the Commander-in-Chief of Our said



Island, shall take upon him the administration of the government, and execute Our said commission and instructions and the several powers and authorities therein contained, in the manner therein directed. It is, nevertheless, Our express will and pleasure that in such case the Councillor so administering the government shall forbear to pass any Act or Acts but what are immediately necessary for the peace and welfare of the said Island, without Our particular order for that purpose; and that he shall not take upon him to dissolve the Assembly then in being, or to remove or suspend any of the members of Our Council, nor any judges, justices of the peace, or other officer, civil or military, without the advice and consent of at least seven of the Council, nor even then without good and sufficient reason for the same, which the said President is to transmit, signed by himself and the respective Council, to Us, through one of Our principal Secretaries of State.

64. And whereas We are willing to provide in the best manner for the support of the government of Our said Island, by setting apart sufficient allowances to such as shall be Our Governor or Commander-in-Chief, residing for the time being within the same, Our will and pleasure is, that when it shall happen that you shall be absent from Our said Island, one full moiety of the salary, and of all perquisites and emoluments whatsoever, which would otherwise become due unto you, shall, during the time of your absence, be paid and satisfied unto such Lieutenant Governor or President of the Council for the time being, which We do hereby order and allot unto him for his maintenance, and for the better support of the dignity of Our government.

65. And you are upon all occasions to send to Us, through one of Our principal Secretaries of State, a

particular account of all your proceedings, and of the condition of affairs within your government.

WILLIAM, R.

## ROYAL PROCLAMATION ESTABLISHING REPRESENTATIVE GOVERNMENT<sup>1</sup>

July 26, 1832

WILLIAM the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, &c.

To all to whom these presents shall come, greeting:

WHEREAS by Our letters patent under the great seal of Our United Kingdom aforesaid, bearing date at Westminster, the 2d of March 1832, in the second year of Our reign, We have given and granted to Our trusty and well-beloved Sir Thomas John Cochrane, Knight, Our Governor and Commander-in-Chief of Our Island of Newfoundland, full power and authority to summon and call a General Assembly of the freeholders and householders within Our said Island; it is therefore Our pleasure, and We do hereby declare and make known to all Our loving subjects within the same, that for the purpose of the election of the members of the said Assembly, the said Island shall be divided into nine districts, to be called respectively

The district of St. John.

The district of Conception Bay.

The district of Fogo.

The district of Bonavista.

The district of Trinity Bay.

The district of Ferryland.

<sup>1</sup> Commons Papers, 1831-32, vol. 32, No. 704, p. 14.



The district of Placentia and St. Mary.

The district of Burin.

The district of Fortune Bay.

. . . . .  
And We do further declare Our pleasure to be that Our said Governor do issue in Our name writs for the election of the members of the several districts before mentioned, which writs shall be addressed to the several returning officers aforesaid, and shall by them be returned to the Colonial Secretary for the time being of Our said Island.

And it is Our will and pleasure that every man, being of the full age of twenty-one years and upwards, and being of sound understanding, and being Our natural born subject, or having been lawfully naturalized, and never having been convicted in due course of law of any infamous crime, and having for two years next immediately preceding the day of election occupied a dwelling-house within Our said Island as owner or tenant thereof, shall be eligible to be a member of the said House of Assembly.

And it is Our further will and pleasure, that every man who for one year next immediately preceding the day of election hath occupied a dwelling-house within Our said Island as owner or tenant thereof, and who in other respects may be eligible, according to the regulations aforesaid, to be a member of the said House of Assembly, shall be competent and entitled to vote for the election of members of the said Assembly in and for the district within which the dwelling-house so occupied as aforesaid by him may be situate.

And it is Our pleasure that the votes for the members of the said Assembly shall be taken by the said several returning officers at such one or more place or places within each of the said districts as shall for that purpose

be appointed in the body of the writ addressed to the returning officer of every such district respectively, and at or within such time or times as shall for the purpose be therein limited: but inasmuch as by reason of the difficulty of internal communication within Our said Island, many persons entitled to vote might be prevented from the exercise of such their franchise, if in every case it were necessary to attend in person for that purpose, We do therefore declare Our pleasure to be, that in respect of any dwelling-house situate at the distance of more than ——— miles from the nearest place of election, within any of the said districts, the vote of any householder, duly qualified as aforesaid, may be given without his personal attendance, by a written notice subscribed by such voter, in the presence of two credible witnesses, and duly attested by their signatures; which notices shall be in such form as Our Governor for the time being of Our said Island shall from time to time direct.

And it is Our further pleasure, that if any candidate or voter at any such election shall object to any vote then tendered, it shall be the duty of the returning officer to hear such objection, and what may be alleged in support of, or in answer to, the same, and to examine on oath the parties by or against whom such objection may be raised, and any person or persons who may be adduced as a witness or as witnesses on either side; and upon such hearing, to admit or to overrule any such objection as may to such returning officer appear just and right.

And We do further declare Our will to be, that the persons in favor of whom the greater number of votes shall be given in any such district shall be publicly declared by such returning officer to be duly elected to be the representatives thereof in the said General Assembly, and

shall thereupon be returned and take their seats accordingly: Provided always, that in cases of peculiar doubt or difficulty, it shall be competent for any such returning officer to make a special return, setting forth the grounds of such doubt, upon which the said House of Assembly shall afterwards decide.

And it is Our will, and We do further declare, that the Assembly so to be chosen as aforesaid shall continue only during Our pleasure, and that the said Assembly shall not proceed to the despatch of any business, unless six members at the least shall be present at and during the whole of the deliberations of the said House thereupon.

And whereas it may be necessary, in order to the complete execution of the several purposes aforesaid, that further regulations should be made for the conduct of the said elections, and the return of members to serve in the said House of Assembly, We have therefore authorized, and do hereby authorize, Our Governor for the time being of Our said Island, by any proclamation or proclamations to be by him from time to time issued in Our name and on Our behalf, to make such further regulations as may be necessary for the conduct of the said elections, and for the return of members to serve in the said House of Assembly, and for the due discharge of the duties of the said returning officer; and which regulations shall be of full force, virtue and effect until provision be otherwise made by law, it being, nevertheless, Our pleasure that the regulations so to be made as aforesaid be not repugnant to, or inconsistent with, the several provisions hereinbefore contained, or any of them.

Given at our Court, at St. James's, on the twenty-sixth day of July, one thousand eight hundred and thirty-two, in the third year of Our reign.

ACT TO AMEND THE CONSTITUTION OF  
THE GOVERNMENT OF NEWFOUNDLAND

[5 &amp; 6 Victoria, cap. 120]

1842

*An Act for amending the Constitution of the Government of Newfoundland.*

WHEREAS by a Commission under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the second day of March in the year one thousand eight hundred and thirty-two, his late Majesty King William IV, did give and grant unto the then Governor of the Island of Newfoundland full power and authority, with the advice and consent of the Council of the said Island, from time to time, as need should require, to summon and call general assemblies of the freeholders and householders within the said Island and its dependencies, in such manner and form, and according to such powers, instructions, and authorities, as were granted or appointed by certain instructions under his said late Majesty's sign manual and signet accompanying the said commission; and his said late Majesty did by the said Commission declare, that the persons so elected, having taken certain oaths therein mentioned, should be called and deemed the General Assembly of the said Island of Newfoundland; and the said Governor, by and with the advice and consent of the said Council and Assembly or the major part of them respectively, was by the said commission empowered and authorized to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of the said



Island and its dependencies, and the people and inhabitants thereof, and such others as should resort thereto, and for the benefit of his late Majesty, his heirs and successors:

And whereas by the before-mentioned instructions so referred to as aforesaid in the said commission the said Governor was authorized to issue a proclamation dividing the said Island into districts or counties, towns or townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each of such districts or counties, towns or townships respectively:

And whereas the proclamation referred to in the said last-mentioned instructions was accordingly issued by the said Governor in the name and on the behalf of his said late Majesty, whereby the said Island was divided into nine districts for the purpose of the election of the Members of the said Assembly; and it was by the said proclamation, amongst other things, declared that every man being of the full age of twenty-one years and upwards, and being of sound understanding, and being a natural born subject of his said late Majesty, or having been lawfully naturalized, and never having been convicted in due course of law of any infamous crime, and having for two years next immediately preceding the day of election occupied a dwelling-house within the said Island, as owner or tenant thereof, should be eligible to be a Member of the said House of Assembly; and it was by said Proclamation further declared, that every man who for one year next immediately preceding the day of election had occupied a dwelling-house within the said Island, as owner or tenant thereof, and who in other respect might be eligible, according to the regulations aforesaid, to be a Member of the said House of Assembly, should be competent and entitled to



vote for the election of Members of the said Assembly in and for the district within which the dwelling-house so occupied as aforesaid by him might be situated.

And whereas, in pursuance of the said commission, instruction, and proclamation, general assemblies have since been elected and holden in and for the said Island of Newfoundland in the manner therein prescribed; and the said commission and instructions have from time to time been renewed on the appointment of the successive Governors of the said Island, and divers laws have been made in pursuance thereof by the said Governor, Council, and Assembly:

And whereas it is expedient that the changes hereinafter mentioned should be made in the Constitution of the Government of the said Island: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for Her Majesty in or by any commission or commissions under the great seal of the United Kingdom, to be hereafter issued for the government of Newfoundland, and in and by any instructions under Her Majesty's signet and sign manual accompanying and referred to in any such commission or commissions, to establish a qualification in respect of income or property, in right of which any person may be hereafter elected to serve as a member of the said Assembly; provided that no such qualification shall be fixed at more than a net annual income, arising from any source whatsoever, of 100 pounds or the possession of property, clear of all incumbrances, exceeding 500 pounds in amount or value.

II. And be it enacted, that it shall be lawful for Her

Majesty, in manner aforesaid, to fix and determine the length of the period of residence within any electoral district in the said Island which shall be required in addition to any other qualification for voting at elections within such district, or for being elected to serve as a member of the Assembly; provided that such period shall not extend beyond the period of two years next preceding any such election.

VIII. Provided always, and be it enacted, that no change which shall be made in the Constitution of the said Island under this Act shall continue for a longer time than the first day of September, 1846, unless Parliament shall otherwise order; but this enactment shall not be construed to annul or affect any laws, statutes, or ordinances made by the Legislature of the said Island as constituted under the authority of this Act.

## ACT TO AMEND THE CONSTITUTION OF THE GOVERNMENT OF NEWFOUNDLAND

[9 & 10 Victoria, cap. 45]

1846

*An Act to continue until the first day of September, one thousand eight hundred and forty-seven, certain of the provisions of an Act of the fifth and sixth years of Her present Majesty for amending the Constitution of the Government of Newfoundland.*

WHEREAS by an Act passed in the fifth and sixth years of the reign of Her Majesty [cap. 120], for amending the Constitution of the Government of Newfoundland, divers powers and authorities were for that purpose vested in Her

Majesty, and it was thereby provided that no change which should be made in the constitution of the said Island under the said Act should continue for a longer time than the 1st day of September, 1846, unless Parliament should otherwise order: and whereas by virtue of the provision last aforesaid the changes made in the constitution of the said Island under the said Act will cease to be in force upon and from and after the 1st day of September now next ensuing, unless further provision in that behalf be made by Parliament; and it is expedient that the changes made in the constitution of the said Island under the said Act should continue to be in force until the 1st day of September which will be in the year 1847: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the changes made in the constitution of the said Island under the said recited Act shall continue in force until the 1st day of September which will be in the year 1847.

II. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this session of Parliament.

ACT TO RENDER PERMANENT CERTAIN  
PARTS OF THE CONSTITUTION OF THE  
GOVERNMENT OF NEWFOUNDLAND

[10 & 11 Victoria, cap. 44]

1847

*An Act to render permanent certain parts of the Act for amending the Constitution of the Government of Newfoundland.*

WHEREAS by an Act passed in the session of Parliament holden in the fifth and sixth years of the reign of her present Majesty [cap. 120], entitled, "An Act for amending the Constitution of the Government of Newfoundland," it was amongst other things enacted, that it should be lawful for Her Majesty, in or by any commission or commissions under the great seal of the United Kingdom, to be thereafter issued for the Government of Newfoundland, and in and by any instructions under Her Majesty's signet and sign manual accompanying and referred to in any such commission or commissions, to establish a qualification in respect of income or property, in right of which any person might be thereafter elected to serve as a Member of the Assembly of Newfoundland; provided that no such qualification should be fixed at more than a net annual income, arising from any source whatsoever, of 100 pounds, or the possession of property, clear of all incumbrances, exceeding 500 pounds in amount or value; and that it should be lawful for Her Majesty, in manner aforesaid, to fix and determine the length of the period of residence within any electoral district in the said Island which should be required, in addition to any other qualification, for voting at



elections within such district, or for being elected to serve as a Member of the Assembly, provided that such period should not extend beyond the period of two years next preceding any such election; and that it should be lawful for Her Majesty, in manner aforesaid, to restrain the said Assembly from appropriating to the public service within the Island of Newfoundland any part of the public revenue thereof in cases where such services should not have been previously recommended, or such grants of money should not have been previously asked by or on the behalf of Her Majesty; and that it should be lawful for Her Majesty, in manner aforesaid, to restrain and prohibit the election of Members to serve in the said Assembly in different districts on successive or different days, and to require that all such elections should be simultaneous, and should be completed within a time to be limited, and that any such future commission or instructions as aforesaid should be laid before both Houses of Parliament within thirty days next after the date thereof, should Parliament then be in session, or if not, then within thirty days next after the commencement of the then next session of Parliament; and it was thereby provided that no change which should be made in the Constitution of the said Island under the said Act, should continue for a longer time than the first day of September, one thousand eight hundred and forty-six, unless Parliament should otherwise order: and whereas by an Act passed in the session of Parliament holden in the ninth and tenth years of Her Majesty's reign [cap. 45], entitled, "An Act to continue till the first day of September, one thousand eight hundred and forty-seven, certain of the provisions of an Act of the fifth and sixth years of Her present Majesty, for amending the Constitution of the Government of Newfoundland," it was



enacted, that the changes made in the Constitution of the said Island under the said recited Act should continue in force until the first day of September, one thousand eight hundred and forty-seven: and whereas upon and from the first day of September, one thousand eight hundred and forty-seven, the changes made in the Constitution of the said Island under the first recited Act will cease to be in force unless further provision in that behalf be made by Parliament; and it is expedient that from and after the said first day of September, one thousand eight hundred and forty-seven, the first recited Act should cease to be in force, save only so far as the same is hereinbefore recited: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much as is hereinbefore recited of the first recited Act shall be permanent, and that upon and from and after the first day of September, one thousand eight hundred and forty-seven, so much of the said Act as is not hereinbefore recited shall cease to be in force.

II. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this session of Parliament.

DESPATCH FROM THE COLONIAL OFFICE  
TO THE GOVERNOR OF NEWFOUNDLAND  
AUTHORIZING THE ESTABLISHMENT  
OF RESPONSIBLE GOVERNMENT<sup>1</sup>

February 21, 1854<sup>2</sup>

I HAVE to acknowledge your despatch No. 41, of the 28th June last, transmitting an address from the House of Assembly, announcing the appointment by that body of three of its members to represent to Her Majesty's Government the state of the Colony of Newfoundland, and operation of its present system of government, and on the establishment of reciprocal free trade with the United States of America.

2. Both during and since the visit of the gentlemen in question to England, I have given to the first of these subjects my fullest consideration, and have not failed to give due weight to the circumstance that the same expressions of opinions and wishes have proceeded from successive bodies of representatives elected by the people, with full knowledge that this important question was at issue.

3. Her Majesty's Government have come to the conclusion that they ought not to withhold from Newfoundland those institutions, and that system of civil administration which, under the popular name of responsible government, have now been adopted in all Her Majesty's neighboring possessions in North America.

4. They are prepared to concede the immediate application of this system, as soon as certain necessary preliminary

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 1.

<sup>2</sup> Received *ca.* March 1.

conditions have been acceded to on the part of the Legislature.

5. The first of these is the same which has been agreed to, and put in practice when the recent change of the same description took place in Nova Scotia and in Prince Edward Island, namely, the indemnification of present holders of those offices which, by the change in question, will be rendered liable to be vacated at the will of the majority of the Legislature. The provision in question should be made either in the form of pension, or of a round sum by way of indemnity; but as to the number of officers who must be regarded as thus liable to removal, and entitled to protection, and the amount and character of the compensation so to be given, I must rely on your judgment, with the advice of your Council, and of those whom you may think fit to consult with on this occasion; and you are authorized to submit any question which cannot be thus arranged, to myself for final decision.

6. The following are the remaining conditions which I consider indispensable, and which have been suggested to me by the consideration of circumstances peculiar to Newfoundland.

7. (1)—A considerable increase of the members of the House of Assembly. I would suggest that the increase should be from the present number to thirty, and that it should be effected, not by giving additional members to existing constituencies, but by subdividing, as equally as geographical positions would admit, the districts now returning members; which appear to be, in most instances, too large for the convenient exercise of the franchise.

8. (2)—In reference to my despatch on the financial condition of the Colony, lately directed to be laid before the Assembly, it appears to me necessary that the law

should be assimilated to that of Nova Scotia (Revised Statutes, c. 7, s. 44) with regard to the expenses of elections, which should no longer be paid from the Colonial Treasury, but be defrayed (under proper conditions as to amount) by the members.

9. (3)—Payment of the members for their expenses and attendance to be no longer made by the Colonial Treasury, but by local assessment, levied in each electoral district.

10. These measures having been taken by the Legislature, Her Majesty's Government will proceed to separate the Executive from the Legislative Council, and to provide, by instructions from Her Majesty, that the latter shall consist of not less than ten nor more than fifteen members, nominated by the Crown.

11. With regard to the stipulations respecting the grant of a civil list to Her Majesty, which have usually accompanied the grant of responsible governments, it appears to me sufficient to refer you to the arrangements already made under the Act of Parliament 2 & 3 Will. 4, c. 78, and the Acts of the Newfoundland Legislature, 7 Vict., c. 1, & 8 Vict., c. 6, leaving it to yourself to consider whether any modification of these provisions is now required.

12. These are conditions some of which, I am persuaded, are essential to justice, and others highly important to the satisfactory working of the new system; and I trust that, with these additions, the adoption of the system in question will not merely satisfy the long expressed desire of the majority of the people of Newfoundland for freer institutions, but will also prove favorable to practical improvements in the government of the Colony.

13. As regards the portion of the address which re-



lates to free trade with the United States, you will inform the Assembly that Her Majesty's Government are still in negotiation with that of the United States, and that in the conduct of that negotiation every attention will be paid to their expressed wishes, and those of their constituents.

REPORT OF THE GOVERNOR OF NEWFOUND-  
LAND ON THE CONDITIONS OF OPINION  
IN THE COLONY RELATIVE TO RE-  
SPONSIBLE GOVERNMENT <sup>1</sup>

February 23, 1854

I HAVE the honor to acquaint your Grace that on the 31st ultimo, I opened the session of the Legislature with the accompanying speech, which was generally very well received, and was only excepted to by the Roman Catholic party in the House of Assembly, on account of its omission of all reference to the subject of responsible government.

A committee of five, three Protestants and two Roman Catholics, was appointed to draft an address in reply; the three first named of whom reported an address drawn in the manner heretofore usual, noticing the several matters referred to by me, and containing the usual assurance of a desire to co-operate in maturing the measures to which I had directed their attention.

The address was read a first and second time, and on the 9th instant, was committed; but, on the first paragraph being proposed for adoption, Mr. Little addressed the House, and declared it to be the intention of himself and

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 2. Made prior to receipt of despatch just quoted.



his party to permit the transaction of no further business under the present form of government; but after passing an address signifying this their determination, to await the decision of Her Majesty's Government upon their application for responsible government.

An amendment to the question was then proposed by Mr. Emerson, consisting of an address complete in itself, and which is herewith transmitted; and which after a lengthened opposition, was on the 13th instant, finally passed on the usual division; five Protestant members voting against it, seven Roman Catholic members and one Protestant (the proposer) voting for it.

On the 15th instant, I received this address, and made the reply herewith transmitted; the address being presented to me by the majority only, the minority absenting themselves on such occasion, to avoid, as I hear, the appearance of their having in any way concurred in its principle.

Having received my reply, the House adjourned to the 20th instant, the day on which the English mail was expected; Mr. Little having first given notice of a future address to the Colonial Office, should no satisfactory information be then received, and his party having expressed their determination then to adjourn for a further period of two months, to await the arrival of despatches from England.

The declaration of their intention to transact no further business, has, in the meantime, been carried into effect by their refusing to permit the introduction of a bill, of which notice had been given by Mr. March, for the better regulation of the seal fishery now about to commence; and by the rejection on the 14th instant, of a bill brought in by my directions, by the Solicitor General, designed to check the ruinous traffic in bait, which has been heretofore

carried on on the southern shores. The latter measure is one earnestly required by the people generally, and considered so imperatively necessary by the Assembly themselves, that during the last session, they unanimously passed an address, praying that I would hire a steamer for effectually carrying out this service. Permitting this traffic is, in effect, a sanction of that theft of our seed which leaves our own district barren.

I need hardly observe, that this entire suspension of business, if continued, will produce a vast amount of mischief. The loss of the Bait Bill alone will most probably be felt in a failure of the fishery in many parts; without a revenue bill, the public creditor cannot receive his dividends, and the debt of the Colony will be much increased, while the want of supply and education bills will occasion great distress amongst many classes. . . .

Three courses present themselves for consideration: First, the immediate unqualified concession of responsible government with its attendant evils and its injustice to the Protestant majority of the population. Second, its concession after a partial subdivision of the electoral districts, and an increase in the representation on a basis to be settled by Her Majesty's Government; and third, a return to the amalgamated form of government.

Having regard to the condition of the country and to the necessity for preventing future difficulties such as the present, the last system could be worked with greater certainty and with less expense than any other. Either course would, I presume, involve the principle of separate councils, and can only be carried into effect by an Act of Parliament.

Should your Grace determine upon either of the above mentioned, or upon any other course of proceeding which

will preclude the practicability of legislative action here before the expiration of the Local Revenue Act (16 Vict., c. 1), which will expire on the 28th of May, I would earnestly suggest the necessity for a short Act being passed in Parliament, continuing it for one or two years. The Assembly could then be dissolved and matters permitted to remain as at present, until the change determined on had been carried into effect. Indeed the absence of any intimation of your Grace's determination on the question is, at present, a fortunate circumstance, as it will afford the opportunity, of which I am informed the Protestant part of the population will avail themselves, to lay before Her Majesty's Government the expression of their opinions.

A report is in circulation here, founded on some private correspondence that it is the intention of Her Majesty's Government to concede responsible government upon certain conditions, which have not been mentioned. If these conditions be a fuller and a fairer representation in the Assembly, I very much fear—looking at the determination evinced by the Roman Catholic Members to accede to no representation which did not secure their present majority—that any proposal of that kind will prove nugatory; and, in view of such an event, the Imperial Act, for the continuance of the Local Revenue Act, will still be necessary.

I annex a copy of the report of the delegates, and extracts from two local newspapers. The "Public Ledger" is the organ of the Protestant party; the "Newfoundlander" of the Roman Catholic party, in effect, of the Roman Catholic Bishop.

On Monday the 21st instant, to which day the House adjourned, to wait the arrival of the packet, Mr. Little

being engaged in Court, and the Protestant minority not attending, in consequence of the resolution of the House to do no business, there was an adjournment for want of a quorum. On the next day, the minority still being absent, a vote of thanks was passed to the delegates, and the accompanying address to your Grace was adopted.

With reference to that part of the report of the delegates which relates to the acts of the Council in its legislative capacity, and on which is mainly grounded the necessity, in the judgment of the Assembly, for responsible government, I cannot do better than refer your Grace to Mr. Row, a member of the Council, now in England, upon whose long experience, from his residence for half a century in this Colony, his sound judgment and integrity, your Grace may safely rely for any explanation that you may require of the complaints of the Assembly in this respect. Without wishing to urge any opinion of my own, I may yet say that, except in the matter of the Road Bill, and then only to prevent what the Council deemed a gross injustice, they do not appear to me to have trespassed on the legitimate functions of the Assembly. The other points in discussion between the two Houses were those in which the Council might fairly differ from the views of the Assembly, and in so doing be very far from meriting the charge that they were not consulting the true interests of the country. On the contrary, in all these measures the reasons which guided the Council will, I have no doubt, on full consideration of your Grace, appear to be such as, in the independent exercise of their judgment, are fully as weighty and regardful of the public welfare as—if not more so than—those which actuated the Assembly. On all these points, however, I am glad to



think that Mr. Row will be at hand to afford to your Grace every necessary information.

While writing this despatch, I have received a letter from the President of the Chamber of Commerce of St. John's, requesting me to forward the accompanying memorial to your Grace, referring to the present position of affairs here; inviting your Grace's attention to their address forwarded in February 1852, on the subject of responsible government; stating that their opinions on that subject are unchanged; and praying that the Revenue Act, now shortly to expire, may be continued by an Act of the Imperial Parliament, for such time as may be necessary to enable Her Majesty's Government fully to deal with the important subject of responsible government. This demonstration on the part of the merchants, shows that there is no desire on their part to take advantage of the opportunity which would occur, by the lapse of the Revenue Bill, of forwarding their own interests; but, on the contrary, a highly laudable desire to prevent that injury to the public credit which must inevitably result from the reckless course threatened by the Assembly.

## REPLY OF THE LEGISLATIVE ASSEMBLY TO AN ADDRESS OF THE GOVERNOR <sup>1</sup>

February 15, 1854

WE, Her Majesty's dutiful and loyal subjects, the Commons of Newfoundland in general assembly convened, beg to assure your Excellency that while we thank your Ex-

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 7. Enclosure in the foregoing report; the address itself and the reply of the Council contain no references to responsible government.



cellency for the gracious speech with which you have been pleased to open the present session of the Legislature, we sincerely reciprocate your expressions of regret at the present depressed condition in this Colony, and the financial difficulties of the Government, which are attributable not only to the partial failure of the fisheries, and the visitation of the potato disease, but also to the character of the trade of this Colony, and the absence of a vigorous, economical, and truly British system of government, to encourage the development of its extensive resources, to uphold the rights and interests of the operative population, and faithfully administer the public affairs.

We cordially tender our acknowledgements to your Excellency for calling our attention to several subjects connected with the welfare of the country, and for the assurance of your desire to facilitate to the utmost of your power our labors for the promotion of the public good; at the same time, we frankly avow our mature conviction, that however anxious we may be to render our best exertions conducive to the prosperity of the people, judging from the experience of the past and the avowed policy of your Excellency's confidential advisers in their legislative capacity, we entertain no hope of obtaining their necessary cooperation in measures of general practical utility, except on terms alike injurious to the public service, degrading to the people's representatives, and subversive of the rights and privileges confided to our guardianship.

Having declared, as late as the last session of the Legislature, that neither the anomalous system of government in force in this Island, nor your Excellency's Council, possessed the confidence of the public or of this House, we addressed a memorial to the noble Secretary of State for the Colonial Department, and both Houses of Parliament,

praying for the immediate introduction of a responsible system of government into this Colony; and we have been gratified to learn from the delegates deputed by this House to proceed to London for the purpose of promoting the objects of the memorial, that they have received such assurances from the noble Secretary, as induce us to conclude that the long desired boon shall be conceded.

We respectfully solicit your Excellency to place before this House copies of any correspondence which may have taken place between your Excellency and the Colonial Department, since the last session of the Legislature, on this highly important subject, the satisfactory settlement of which we deem essential to the useful existence of the popular branch of the Legislature, of paramount importance to the country, and indispensable to the better administration of the Government.

In conclusion, while we do not hesitate to assure your Excellency that you will be indemnified for any outlay that has been made or may be rendered necessary for the relief of the poor and the telegraph laborers, we deem it our duty to inform your Excellency, with the utmost reliance upon your Excellency's good sense and impartial judgment for a favorable construction of the motives influencing our conduct, that we have deliberately come to the conclusion to await the decision of the Imperial Government upon the right of the people of this old and loyal dependency of the British Crown to the possession of self-government, in the constitutional acceptance of the term, rather than waste our time and exhaust the patience of the public in witnessing a renewal of fruitless attempts at legislation under the present constitution.

REPLY OF THE GOVERNOR TO THE LEGISLATIVE ASSEMBLY <sup>1</sup>

February 15, 1854

I HAVE not received a reply to my despatch forwarding the memorial of the House, praying for a change of the constitution of the Colony; and I cannot adopt the irregular and inconvenient proceeding of laying before you correspondence on a subject referred to the Crown, and upon which a decision has not yet reached me. Indeed, upon this topic the delegation from your honorable House appears to have received assurances which have not yet been communicated to myself.

I thank you for your assurance of indemnifying me for any outlay that has been made or may be rendered necessary for the relief of the poor.

I must, however, express my great regret that you have come to the conclusion to defer legislation on subjects—particularly those of vital importance to the Colony—which it has been my duty to bring before you. Whether the public interests have been consulted in arriving at the determination to which you have come, is a question for your own consideration; and, with you will rest the responsibility for any detriment to those interests, which may result from the course you have resolved to pursue.

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 8. Enclosure in the Report of February 23.

REPLY FROM THE COLONIAL OFFICE TO  
THE REPORT OF THE GOVERNOR<sup>1</sup>

March 17, 1854

I HAVE received your despatch, No. 86, of the 23d of February last, transmitting copies of the speech with which you opened the session of the Legislature of Newfoundland, and of the answers returned thereto, a memorial from the Chamber of Commerce, and an address to myself from the House of Assembly.

I consider that I shall best consult the convenience of your Government and the interest of the Colony, by refraining from any discussion upon the contents of your despatch and the documents accompanying it. I will therefore merely refer you, and the public bodies which have addressed me, to my despatch of the 21st ultimo, and express my earnest hope, that the concession of "responsible government" to Newfoundland may be attended with all the benefits which the advocates for that system of Government anticipate.

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 37.



REPORT OF THE GOVERNOR UPON TRANSMITTING TO THE LEGISLATIVE ASSEMBLY THE CONSENT OF THE COLONIAL OFFICE TO THE ESTABLISHMENT OF RESPONSIBLE GOVERNMENT<sup>1</sup>

March 23, 1854

I HAVE the honor to enclose a copy of my message transmitting to the House of Assembly your Grace's despatch, No. 49, of the 21st ultimo, on the subject of the new system of government:

ENCLOSURE

THE GOVERNOR having forwarded to the Secretary of State for the Colonies the address from your honorable House to his Grace of the 15th June last, upon the subjects of responsible government, and reciprocal free trade with the United States of America, has, this day, received from his Grace a despatch in reply, of which the Governor herewith transmits a copy.

With reference to the proposed new form of Government for this Colony, the Governor will be happy to co-operate with your honorable House in fulfilling those prerequisites, some of which his Grace considers essential to justice, and others highly important to the satisfactory working of the new system of government. The Governor hopes that the result of the deliberations of the Legislature, with a view to the introduction of the new system, and the operation of the system itself, will conduce to the welfare of this ancient dependency of the Crown.

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 41.



## REPORT OF THE GOVERNOR UPON THE RE- CEPTION OF THIS CONSENT BY THE LEGISLATIVE ASSEMBLY<sup>1</sup>

March 24, 1854

WITH reference to my despatch, No. 90, of the 23d instant, enclosing a copy of my message transmitting to the House of Assembly your Grace's despatch No. 49, of the 21st ultimo, on the subject of responsible government, I have the honor to inform your Grace that I received from that body on the evening of yesterday, the 23d, the enclosed address, requesting me to cause the mail steamer to be delayed for a period of 24 hours, to enable them to forward by this mail what they termed "a reply to such despatch." This request I complied with.

2. I have just received an address from the Assembly to your Grace, which I enclose herewith.

3. This address states that the concession of responsible government, on the conditions attached by your Grace, instead of being received with approval by the people, would be rejected without hesitation; but the accompanying "Public Ledger" of this day—the ablest and most influential journal of this Colony, which represents the sentiments of the Protestants, that is, of the majority of the people—in addition to saying that the terms of your Grace's despatch exactly meet the prayer of their recent petition to the Queen, has the following statement: "And we have no doubt that the Protestant population generally will be gratified at the opportunity of evincing how much they concur

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 42.

in the justice of the principles contained in the despatch of the noble Duke, who has so much entitled himself to their best and warmest thanks.”

4. The enclosed minutes of this day's proceedings show the opinion of the minority of the House in the shape of an amendment which confirms the statement above referred to.

5. As to the stereotyped observations respecting the Council I need not occupy your Grace's time by remarks upon them.

6. The principles of a subdivision of the more populous districts, and an increase of the representation on a fair basis, adopted in your Grace's despatch, and so earnestly insisted on by the Protestants of the country, ought not, I think, on any account, to be abandoned, as the result of such a course would be that which I have so frequently pointed out.<sup>1</sup>

<sup>1</sup> Bills for altering the basis of representation in the Legislative Assembly and for protecting office holders against loss in the sense indicated by the despatches from the Colonial Office were finally adopted in November, 1854, and assented to in January, 1855, not without much debate, conference and diplomacy, to mention only the mildest forms of manoeuvring observable among the various parties and persons interested. The new elections were held and responsible government set up in the spring of 1855 as the following items show. For much illuminating material in the case and texts of the Representation and Pension bills see, *ibid.*, pp, 102, 112, 118, 119, 121-123, and, in general, 1-123. For a valuable index to the papers relating to the events in Newfoundland, as well as to the other dominions, see: *Guide to the Principal Parliamentary Papers Relating to the Dominions, 1812-1911* by M. I. Adams, J. Ewing, and J. Munro, published by Oliver and Boyd, 33 Paternoster Row, E. C., London, 1913.

## REPORT OF THE GOVERNOR ON THE FINAL STEPS OF THE PROCESS OF THE ESTAB- LISHMENT OF RESPONSIBLE GOVERN- MENT IN NEWFOUNDLAND <sup>1</sup>

December 29, 1854

REFERRING to my despatch No. 127, of the 14th November last, I have now the honor to acquaint you that having, with the advice and consent of the Council, fixed the elections to take place on the 7th and 12th May, I have issued the necessary proclamation for that purpose in the form heretofore followed, with such modifications only as were requisite to make it accord with the terms of the recent Act for increasing the number of representatives.

. . . . .

3. I have now to solicit your directions with reference to the separation of the Councils, for which purpose, I presume, a Royal Instruction will be forwarded to me.

. . . . .

5. Considering the relative number of the members of the Assembly, I am of opinion that the number of the Council need not, for the present, exceed 12. The Executive Council may, for the present, with convenience, consist of the remaining members of the existing Council, excepting the officer commanding the troops; seven in all. Of course, on the meeting of the Legislature, a reconstruction of the Executive Council will necessarily take place; and it will then embrace such a number (seven would be ample) of the members of the Legislative Council and Assembly as might be selected by the party having the majority in the Assembly under the new system of government.

. . . . .

<sup>1</sup> Commons Papers, 1854-55, vol. 36, No. 273, p. 121.

REPLY OF THE COLONIAL OFFICE TO THIS  
REPORT <sup>1</sup>

January 25, 1855

I HAVE to acknowledge the receipt of your despatch No. 142, of the 29th of December last, reporting that you had fixed the elections to take place, under the provisions of the new Representation Act, on the 7th and 12th of May, and requesting instructions with reference to the separation of the Legislative and Executive Councils.

On the latter point I have to acquaint you that the necessary instrument, under the royal sign manual, for the reconstruction of the Councils, will be transmitted to you by an early opportunity.

<sup>1</sup> *Ibid.*, p. 123.





PART II  
NEW ZEALAND

## HISTORICAL RÉSUMÉ

New Zealand was erected into a separate Colony and given a charter by letters patent and royal instructions to the Governor issued in November and December 1840 under the authority of a statute of that year. The system of government then established left little room for local influence to become effective in its workings. It was supplanted by letters patent, a charter and a new set of instructions issued in December 1846 under the authority of a statute of that year. This charter contained a very elaborate scheme of government which it was found impossible fully to carry out. The provisions of the law and the charter were partially repealed in 1848, and the plan of 1840 was revived.

The year 1852 saw the passage of a final effort to provide New Zealand with a constitution and, by comparison, a successful effort. By a local statute of 1876 a portion of the scheme of 1852 was revised, but the establishment of responsible government by means of instructions to the Governor and an act of local legislature in 1854-1855 left the fundamental lines of the constitution intact.

# AN ACT FOR THE ESTABLISHMENT AND GOVERNMENT OF NEW ZEALAND

[3 & 4 Victoria, cap. 62]

1840

*An Act to continue until the thirty-first day of December, one thousand eight hundred and forty-one, and to the end of the then next session of Parliament, and to extend the provisions of an Act to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto.*

I. WHEREAS an Act was passed in the ninth year of the reign of King George the Fourth, entitled "An Act to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto": And whereas the said Act hath been since continued, and by an Act passed in the last session of Parliament the said Act hath been further continued, with certain amendments: And whereas the said Act will shortly expire; and it is expedient further to continue the said Act, with such amendments as are herein after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said recited Act, as amended by the said Act of the last session of Parliament, shall continue and be in force until the thirty-first day of December in the year one thousand

eight hundred and forty-one, and thenceforward to the end of the then next session of Parliament.

II. And whereas the said Colony of New South Wales is of great extent, and it may be fit that certain dependencies of the said Colony should be formed into separate Colonies, and provision should be made for the temporary administration of the government of any such newly elected Colony: Be it therefore enacted, that it shall be lawful for Her Majesty, by letters patent to be from time to time issued under the great seal of the United Kingdom, to erect into a separate Colony or Colonies any islands which now are or which hereafter may be comprised within and be dependencies of the said Colony of New South Wales.

III. And be it enacted, that in case Her Majesty shall, by any such letters patent as aforesaid, establish any such new Colony or Colonies as aforesaid, it shall be lawful for Her Majesty, by any such letters patent, to authorize any number of persons, not less than seven, including the Governor or Lieutenant Governor of any such new Colony or Colonies, to constitute a legislative council or legislative councils for the same; and that every such legislative council shall be composed of such persons as shall from time to time be named or designated by Her Majesty for that purpose, and shall hold their places therein at Her Majesty's pleasure; and that it shall be lawful for such legislative council to make and ordain all such laws and ordinances as may be required for the peace, order, and good government of any such Colony as aforesaid, for which such legislative council may be so appointed; and that in the making all such laws and ordinances the said legislative council shall conform to and observe all such instructions as Her Majesty, with the advice of her Privy

Council, shall from time to time make for their guidance therein: Provided always, that no such instructions, and that no such laws or ordinances as aforesaid, shall be repugnant to the law of England, but consistent therewith, so far as the circumstances of any such Colony may admit: Provided also, that all such laws and ordinances shall be subject to Her Majesty's confirmation or disallowance in such manner and according to such regulations as Her Majesty, by any such instructions as aforesaid, shall from time to time see fit to prescribe: Provided also, that all instructions which shall in pursuance hereof be made by Her Majesty, with the advice of her Privy Council, and that all laws and ordinances which shall be made in pursuance hereof by any such legislative council of any such newly erected Colony as last aforesaid, shall be laid before both Houses of Parliament within one month from the date of any such instructions, or from the arrival in this Kingdom of the transcripts of any such laws or ordinances, if Parliament shall then be in session sitting, or, if not, then within one month from the commencement of the next ensuing session of Parliament.

## AN ACT TO GRANT A REPRESENTATIVE CONSTITUTION TO NEW ZEALAND

[15 & 16 Victoria, cap. 72]

1852

x

*An Act to grant a Representative Constitution to the Colony of New Zealand.*

WHEREAS by an Act<sup>1</sup> of the session holden in the third and fourth years of Her Majesty, chapter sixty-two, it

<sup>1</sup> The Act just quoted.

x see notes on inside of cover at back.



was enacted, that it should be lawful for Her Majesty, by letters patent, to be from time to time issued under the great seal of the United Kingdom, to erect into a separate Colony or Colonies any islands which then were or which thereafter might be comprised within and be dependencies of the Colony of New South Wales: And whereas, in pursuance of the powers in Her vested by the said Act, Her Majesty did, by certain letters patent under the great seal of the United Kingdom, bearing date the sixteenth day of November in the fourth year of her reign,<sup>1</sup> erect into a separate Colony the Islands of New Zealand, theretofore comprised within or dependencies of the Colony of New South Wales, bounded as therein described, and the said Islands of New Zealand were thereby erected into a separate colony accordingly; and Her Majesty did by the said letters patent authorize the Governor for the time being of the said Colony of New Zealand and certain other persons to be a Legislative Council for such Colony, and to make laws for the peace, order, and good government thereof: And whereas by an Act of the session holden in the ninth and tenth years of Her Majesty, chapter one hundred and three,<sup>2</sup> the Act firstly herein recited, and all charters, letters patent, instructions, and orders in Council made and issued in pursuance thereof, were repealed, abrogated, and annulled, so far as the same were repugnant to the Act now in recital, or any letters patent, charters, orders in council, or royal instructions to be issued under the authority thereof; and by the Act now in recital certain powers for the Government of the said Islands were vested in Her Majesty, to be executed by letters patent under the great seal of the United Kingdom, or by instructions

<sup>1</sup> Commons Papers, 1841, vol. 17, No. 311, pp. 31-34.

<sup>2</sup> Not here quoted.

under Her Majesty's signet and sign manual, approved in her Privy Council, and accompanying or referred to in such letters patent: And whereas, in pursuance of the said last-mentioned Act, Her Majesty did, by letters patent bearing date at Westminster the twenty-third day of December in the tenth year of her reign, and by certain instructions made and approved as required by such Act, and bearing even date with and accompanying the said letters patent,<sup>1</sup> execute certain of the powers by such Act, vested in Her Majesty for the better Government of the said Islands: And whereas by an Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter five,<sup>2</sup> so much of the said Act secondly herein recited, and the said letters patent and instructions issued in pursuance thereof, as relates to the constitution and establishment of two or more separate assemblies within the said Islands, and of a General Assembly in and for the said Islands, was suspended for five years, unless Her Majesty, with the advice of Her Privy Council, should direct the same to be carried into effect before the expiration of that period; and by the Act now in recital the said firstly recited Act, letters patent, and instructions were revived for the time during which the said secondly recited Act, letters patent, and instructions were suspended as aforesaid; and by the Act now in recital certain powers were vested respectively in the Governor-in-Chief of the said Islands and in such Governor and the Legislative Council thereof: And whereas it is expedient that further and better provision should be made for the Government of New Zealand: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords

<sup>1</sup> Commons Papers, 1847, vol. 38, No. 763, pp. 72, 76.

<sup>2</sup> Not here quoted.

spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. The said Acts, and all charters, letters patent, instructions, and orders in Council issued in pursuance thereof, shall be and the same are hereby repealed, so far as the same are repugnant to or would prevent or interfere with the operation of this Act, or any letters patent or instructions to be issued under the authority or in pursuance of this Act: Provided nevertheless, that all laws and ordinances made and acts done under and in pursuance of the said recited Acts, and any charters, letters patent, instructions, or orders in Council issued in pursuance thereof, shall continue as lawful, valid, and effectual as if this Act had not been passed, save so far as any such laws, ordinances, or acts may be repugnant to or would prevent or interfere with the operation of this Act: Provided also, that, until the expiration of the time or latest of the times appointed for the return of writs for the first election of members of the Provincial Councils of the Provinces established by this Act, the existing Provincial Legislative Councils shall continue to have and exercise all rights, jurisdiction, powers, and authorities which they would have had if this Act had not been passed; and until the expiration of the time appointed for the return of the writs for the first election of the members of the House of Representatives to be constituted under this Act, the Legislative Council of New Zealand shall continue to have and exercise all rights, jurisdiction, powers, and authorities which such Legislative Council would have had if this Act had not been passed.

II. The following Provinces are hereby established in

New Zealand; namely, Auckland, New Plymouth, Wellington, Nelson, Canterbury, and Otago; and the limits of such several Provinces shall be fixed by proclamation by the Governor as soon as conveniently may be after the proclamation of this Act in New Zealand.

III. For each of the said Provinces hereby established, and for every Province hereafter to be established as hereinafter provided, there shall be a Superintendent and a Provincial Council, and the Provincial Council of each of the said Provinces hereby established shall consist of such number of members, not less than nine, as the Governor shall by proclamation direct and appoint.

IV. Upon or before the issue of writs for the first election of members of the Provincial Council for any Province established by or under this Act, the persons duly qualified in each of the said Provinces to elect members for the Provincial Councils as hereinafter mentioned shall elect a Superintendent of such Province; and on the termination of such Council by expiration of the period hereinafter fixed for its continuance, or by the previous dissolution thereof, the persons qualified as aforesaid shall elect the same or some other person to be Superintendent, and so on from time to time; and every such Superintendent shall hold his office until the election of his successor: Provided always, that it shall be lawful for the Governor of New Zealand, on behalf of Her Majesty, to disallow any such election; and if such disallowance be signified by the Governor, under the seal of New Zealand, to the speaker of such Council, at any time within three months after such election, the office of Superintendent shall become vacant; and on any vacancy occasioned by such disallowance, or by the death or resignation of the Superintendent (such resignation being accepted by the



Governor on behalf of Her Majesty), a new election shall in like manner take place: Provided farther, that at any time during the continuance of the office of any such superintendent it shall be lawful for Her Majesty to remove him from such office, on receiving an address signed by the majority of the members of such Provincial Council praying for such removal; and thereupon the like proceedings shall be had as in the case of any such vacancy as above mentioned.

V. It shall be lawful for the Governor, by proclamation, to constitute within each of the said Provinces hereby established convenient electoral districts for the election of members of the Provincial Council, and of the Superintendent, and to appoint and declare the number of members to be elected for each such district for the Provincial Council, and to make provision for the registration and revision of lists of all persons qualified to vote at the elections to be holden within such districts, and for the appointing of returning officers, and for issuing, executing, and returning the necessary writs for such elections, and for taking the poll thereat, and for determining the validity of all disputed returns, and otherwise for ensuring the orderly, effective, and impartial conduct of such elections; and in determining the number and extent of such electoral districts, and the number of members to be elected for each district, regard shall be had to the number of electors within the same, so that the number of members to be assigned to any one district may bear to the whole number of the members of the said Council, as nearly as may be, the same proportion as the number of electors within such district shall bear to the whole number of electors within the limits of the Province.

VI. Every person within any Province hereby estab-



lished or hereafter to be established who shall be legally qualified as an elector, and duly registered as such, shall be qualified to be elected a member of the Provincial Council thereof, or to be elected Superintendent thereof: Provided always, that it shall not be necessary that he reside or possess the qualifications in the particular district for which he may be elected to serve as a member.

VII. The members of every such Council shall be chosen by the votes of the inhabitants of the Province who may be qualified as hereinafter mentioned; that is to say, every man of the age of twenty-one years or upwards having a freehold estate in possession situate within the district for which the vote is to be given of the clear value of fifty pounds above all charges and incumbrances, and of or to which he has been seised or entitled, either at law or in equity, for at least six calendar months next before the last registration of electors, or having a leasehold estate in possession situate within such district, of the clear annual value of ten pounds, held upon a lease which at the time of such registration shall have not less than three years to run, or having a leasehold estate so situate, and of such value as aforesaid, of which he has been in possession for three years or upwards next before such registration, or being a householder within such district occupying a tenement within the limits of a town (to be proclaimed as such by the Governor for the purposes of this Act) of the clear annual value of ten pounds, or without the limits of a town of the clear annual value of five pounds, and having resided therein six calendar months next before such registration as aforesaid, shall, if duly registered, be entitled to vote at the election of a member or members for the district.

VIII. Provided always, that no person shall be entitled

to vote at any such election who is an alien, or who at any time theretofore shall have been attainted or convicted of any treason, felony, or infamous offence within any part of Her Majesty's dominions, unless he shall have received a free pardon, or shall have undergone the sentence of punishment to which he shall have been adjudged for such offence.

IX. It shall be lawful for any member of any Provincial Council, by writing under his hand, addressed to the Superintendent of the Province, to resign his seat in the said Council; and upon the receipt by the Superintendent of such resignation the seat of such member shall become vacant.

X. If any member of any Provincial Council shall for two successive sessions of such Council fail to give his attendance therein, or shall become bankrupt, or shall become an insolvent debtor within the meaning of the laws relating to insolvent debtors, or shall become a public defaulter, or be attainted of treason, or be convicted of felony or any infamous offence, his seat in such Council shall thereupon become vacant.

XI. Any question which shall arise respecting any vacancy in a Provincial Council on occasion of any of the matters aforesaid shall be heard and determined by such council, on such question being referred to them for that purpose by the Superintendent of the Province, and not otherwise.

XII. Whenever it shall be established to the satisfaction of the Superintendent that the seat of any member of the Provincial Council has become vacant, the Superintendent shall forthwith issue a writ for the election of a new member to serve in the place so vacated, during the remainder of the term of the continuance of such Council, and no longer.

XIII. Every Provincial Council shall continue for the period of four years from the day of the return of the writs for choosing the same, and no longer: Provided always, that it shall be lawful for the Governor, by proclamation or otherwise, sooner to dissolve the same, whenever he shall deem it expedient so to do.

XIV. The Governor shall cause the first writs for the election of members of the Provincial Council of every Province hereby established to be issued at some time not later than six calendar months next after the Proclamation of this Act in New Zealand; and upon the expiration of the said period of the continuance of any provincial Council, or upon the previous dissolution thereof, the Governor shall cause writs to be issued for the election of members of the ensuing Council.

XV. It shall be lawful for the Superintendent, by proclamation in the Government Gazette, to fix such place or places within the limits of the Province, and such times for holding the first and every other session of the Provincial Council, as he may think fit, and from time to time, in manner aforesaid, to alter and vary such times and places as he may judge advisable, and most consistent with general convenience.

XVI. It shall be lawful for the Superintendent to prorogue such Council from time to time, whenever he shall deem it expedient so to do.

XVII. Provided always, that there shall be a session of every Provincial Council once at least in every year, so that a greater period than twelve calendar months shall not intervene between the last sitting of the Council in one session and the first sitting of the Council in the next session.

XVIII. It shall be lawful for the Superintendent of

each Province, with the advice and consent of the Provincial Council thereof, to make and ordain all such laws and ordinances (except and subject as hereinafter mentioned) as may be required for the peace, order, and good government of such Province, provided that the same be not repugnant to the Law of England.

XIX. It shall not be lawful for the Superintendent and Provincial Council to make or ordain any law or ordinance for any of the purposes hereinafter mentioned; (that is to say,)

1. The imposition or regulation of duties of customs to be imposed on the importation or exportation of any goods at any port or place in the Province:

2. The establishment or abolition of any Court of judicature of civil or criminal jurisdiction, except courts for trying and punishing such offences as by the law of New Zealand are or may be made punishable in a summary way, or altering the constitution, jurisdiction, or practice of any such court, except as aforesaid:

3. Regulating any of the current coin, or the issue of any bills, notes, or other paper currency:

4. Regulating the weights and measures to be used in the Province or in any part thereof:

5. Regulating the post offices and the carriage of letters within the Province:

6. Establishing, altering, or repealing laws relating to bankruptcy or insolvency:

7. The erection and maintenance of beacons and light-houses on the coast:

8. The imposition of any dues or other charges on shipping at any port or harbor in the Province:

9. Regulating marriages:

10. Affecting lands of the crown, or, lands to which



the title of the aboriginal native owners has never been extinguished:

11. Inflicting any disabilities or restrictions on persons of the native race to which persons of European birth or descent would not also be subjected:

12. Altering in any way the criminal law of New Zealand, except so far as relates to the trial and punishment of such offences as are now or may by the criminal law of New Zealand be punishable in a summary way as aforesaid:

13. Regulating the course of inheritance of real or personal property, or affecting the law relating to wills.

XX. Every Provincial Council shall immediately on their first meeting, and before proceeding to the despatch of any other business, elect one of their members to be the speaker thereof during the continuance of such Council, which election being confirmed by the Superintendent shall be valid and effectual; and in case of vacancy in the said office by death, resignation, or otherwise, then and so often as the same shall happen, the election shall be repeated and confirmed as aforesaid.

XXI. The speaker of each Provincial Council shall preside at the meetings of such Council; but in his absence some member elected by the Council shall preside.

XXII. No Provincial Council shall be competent to the despatch of any business, unless one third of the whole number of members be present.

XXIII. All questions which shall arise in any such Council shall be decided by the majority of votes of the members present other than the speaker or presiding member; but in all cases wherein the votes shall be equal the speaker or presiding member shall have a casting vote.

XXIV. Every Provincial Council at their first meet-



ing, and from time to time afterwards, as occasion may require, shall prepare and adopt such standing rules and orders as may be best adapted for the orderly conduct of the business of such Council, which rules and orders shall be laid before the Superintendent, and being by him approved shall then become binding and in force.

XXV. It shall not be lawful for any Provincial Council to pass, or for the Superintendent to assent to any bill appropriating any money to the public service, unless the Superintendent shall first have recommended to the Council to make provision for the specific service to which such money is to be appropriated; and no such money shall be issued or be made issuable except by warrants to be granted by the Superintendent.

XXVI. It shall be lawful for the Superintendent to transmit to the Provincial Council, for their consideration, the drafts of any such laws or ordinances as it may appear to him desirable to introduce, and all such drafts shall be taken into consideration in such convenient manner as in and by such rules and orders as aforesaid shall be in that behalf provided.

XXVII. Every bill passed by the Provincial Council shall be presented to the Superintendent for the Governor's assent, and the superintendent shall declare, according to his discretion, (but subject nevertheless to the provisions herein contained, and to such instructions as may from time to time be given him by the Governor,) that he assents to such bill on behalf of the Governor, or that he withholds the assent of the Governor, or that he reserves such bill for the signification of the Governor's pleasure thereon: provided always, that it shall and may be lawful for the Superintendent, before declaring his

pleasure in regard to any bill so presented to him, to make such amendments in such bill as he thinks needful or expedient, and to return such bill with such amendments to such Council, and the consideration of such amendments by such Council shall take place in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided: provided also, that all bills altering or affecting the extent of the several electoral districts which shall be represented in the Provincial Council, or establishing new or other such electoral districts, or altering the number of the members of such Council to be chosen by the said districts respectively, or altering the number of the members of such Council, or altering the limits of any town or establishing any new town, shall be so reserved as aforesaid.

XXVIII. Whenever any bill shall have been assented to by the Superintendent as aforesaid, the Superintendent shall forthwith transmit to the Governor an authentic copy thereof.

XXIX. It shall be lawful for the Governor at any time within three months after any such bill shall have been received by him to declare by proclamation his disallowance of such bill; and such disallowance shall make void and annul the same from and after the day of the date of such proclamation or any subsequent day to be named therein.

XXX. No bill which shall be reserved for the signification of the assent of the Governor shall have any force or authority within the Province until the Superintendent shall signify either by speech or message to the Provincial Council, or by proclamation in the Government Gazette, that such bill has been laid before the Governor, and that the Governor has assented to the same; and an entry shall be

made in the journals of the Provincial Council of every such speech, message, or proclamation, and a duplicate thereof, duly attested, shall be delivered to the registrar of the Supreme Court, or other proper officer, to be kept among the records of the Province; and no bill which shall be so reserved as aforesaid shall have any force or authority within the Province unless the assent of the Governor thereto shall have been so signified as aforesaid within three months next after the day on which such bill shall have been presented to the Superintendent for the Governor's assent.

XXXI. It shall be lawful for the Governor from time to time to transmit to the Superintendent of any Province, for his guidance in assenting to or withholding assent from bills, or reserving the same for the signification of the Governor's pleasure thereon, such instructions as to the Governor shall seem fit; and it shall be the duty of the Superintendent to act in obedience to such instructions.

XXXII. There shall be within the Colony of New Zealand a General Assembly, to consist of the Governor, a Legislative Council, and House of Representatives.

XXXIII. For constituting the Legislative Council of New Zealand it shall be lawful for Her Majesty, before the time to be appointed for the first meeting of the general assembly, by an instrument under her royal sign manual, to authorize the Governor in Her Majesty's name to summon to the said Legislative Council such persons, being not less in number than ten, as Her Majesty shall think fit; and it shall also be lawful for Her Majesty from time to time in like manner to authorize the Governor to summon to the said Legislative Council such other person or persons as Her Majesty shall think fit, either for supplying any vacancy or vacancies or otherwise; and every

person who shall be so summoned shall thereby become a member of the said Legislative Council: Provided always, that no person shall be summoned to such Legislative Council who shall not be of the full age of twenty-one years, and a natural born subject of Her Majesty, or a subject of Her Majesty naturalized by Act of Parliament, or by an Act of the Legislature of New Zealand.

XXXIV. Every member of the Legislative Council of New Zealand shall hold his seat therein for the term of his life, subject nevertheless to the provisions hereinafter contained for vacating the same.

XXXV. It shall be lawful for any member of the said Legislative Council, by writing under his hand addressed to the Governor, to resign his seat in the said Council; and upon such resignation and acceptance thereof by the Governor the seat of such member shall become vacant.

XXXVI. If any Legislative Councillor of New Zealand shall for two successive sessions of the General Assembly, without the permission of Her Majesty or of the Governor, signified by the said Governor to the Legislative Council, fail to give his attendance in the said Legislative Council, or shall take any oath or make any declaration or acknowledgement of allegiance, obedience, or adherence to any foreign prince or power, or shall do, concur in, or adopt any Act whereby he may become a subject or citizen of any foreign State or Power, or become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or Power, or shall become bankrupt, or shall become an insolvent debtor within the meaning of the laws relating to insolvent debtors, or shall become a public defaulter, or be attainted of treason, or



be convicted of felony or any infamous crime, his seat in such Council shall thereby become vacant.

XXXVII. Any question which shall arise respecting any vacancy in the said Legislative Council on occasion of any of the matters aforesaid shall be referred by the Governor to the said Legislative Council to be by the said Legislative Council heard and determined: Provided always, that it shall be lawful, either for the person respecting whose seat such question shall have arisen, or for Her Majesty's Attorney General for New Zealand on Her Majesty's behalf, to appeal from the determination of the said Council in such case to Her Majesty; and the judgment of Her Majesty given with the advice of her Privy Council thereon shall be final and conclusive to all intents and purposes.

XXXVIII. The Governor shall have the power and authority from time to time to appoint one member of the said Legislative Council to be speaker of such Council, and to remove him and appoint another in his stead.

XXXIX. The presence of at least five members of the said Legislative Council, including the speaker, shall be necessary to constitute a meeting for the exercise of its powers; and all questions which shall arise in the said Legislative Council shall be decided by a majority of votes of the members present other than the speaker; and when the votes shall be equal the speaker shall have the casting vote.

XL. For the purpose of constituting the House of Representatives of New Zealand it shall be lawful for the Governor, within the time hereinafter mentioned, and thereafter from time to time as occasion shall require, by proclamation in Her Majesty's name, to summon and call together a House of Representatives in and for New



Zealand, such House of Representatives to consist of such number of members, not more than forty-two nor less than twenty-four, as the Governor shall by proclamation in that behalf direct and appoint; and every such House of Representatives shall, unless the General Assembly shall be sooner dissolved, continue for the period of five years from the day of the return of the writs for choosing such House, and no longer.

XLI. It shall be lawful for the Governor by proclamation to constitute within New Zealand convenient electoral districts for the election of members of the said House of Representatives, and to appoint and declare the number of such members to be elected for each such district, and to make provision (so far as may be necessary beyond the provision which may be made for the like purposes in relation to elections for Provincial Councils) for the registration and revision of lists of all persons qualified to vote at the elections to be holden within such districts, and also provision for the appointing of returning officers, and for issuing, executing, and returning the necessary writs for election of members of the House of Representatives, and for taking the poll thereat, and otherwise for ensuring the orderly, effective, and impartial conduct of such elections; and in determining the number and extent of such electoral districts, and the number of members to be elected for each district, regard shall be had to the number of electors within the same, so that the number of members to be assigned to any one district may bear to the whole number of the members of the House of Representatives, as nearly as may be, the same proportion as the number of electors within such district shall bear to the whole number of the electors in New Zealand.

XLII. The members of the said House of Representa-

tives to be chosen in every electoral district appointed for that purpose shall be chosen by the votes of the inhabitants of New Zealand who shall possess within such district the like qualifications which, when possessed within an electoral district appointed for the election of members of a Provincial Council, would entitle inhabitants of the Province to vote in the election of members of the Provincial Council thereof, and who shall be duly registered as electors; and every person legally qualified as such elector shall be qualified to be elected a member of the said House.

XLIII. The Governor shall cause the first writs for the election of members of the said House of Representatives to be issued at some time not later than six calendar months next after the proclamation of this act in New Zealand; and upon the expiration of the said period of the continuance of the House of Representatives, or upon the previous determination of such house by the dissolution of the General Assembly, the Governor shall cause writs to be issued for the election of members of the ensuing House of Representatives.

XLIV. The General Assembly of New Zealand shall be holden at any place and time within New Zealand which the Governor shall from time to time by proclamation for that purpose appoint; and the time so to be appointed for the first holding of such General Assembly shall be as soon as conveniently may be after the return of the first writs for the election of members of the said House of Representatives; and the Governor may at his pleasure prorogue or dissolve the General Assembly.

XLV. The said House of Representatives shall, until provision be otherwise made in that behalf by law, be judges, without appeal, of the validity of the election of each member thereof.

XLVI. No member of the said Legislative Council or House of Representatives shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor, or before some person or persons authorized by him to administer such oath:

‘ I A. B. do sincerely promise and swear, that

‘ I will be faithful and bear true allegiance to

‘ Her Majesty Queen Victoria.

‘ So help me GOD.’

XLVII. Every person authorized by law to make his solemn affirmation or declaration instead of taking an oath may make such affirmation or declaration in lieu of the said oath.

XLVIII. The said House of Representatives shall immediately on their first meeting proceed to the choice of one of their members as their speaker during the continuance of the said House, which choice, being confirmed by the Governor, shall be valid and effectual; and in case of vacancy of the office by death, resignation, or otherwise, then and so often as the same shall happen, the choice shall be repeated and confirmed as aforesaid.

XLIX. It shall be lawful for any member of the said House of Representatives, by writing under his hand addressed to the speaker of the said House, to resign his seat in the said House, and upon such resignation the seat of such member shall become vacant.

L. If any member of the said House of Representatives shall for one whole session of the General Assembly, without the permission of such House, fail to give his attendance in the said House, or shall take any oath or make any declaration or acknowledgement of allegiance, obedience, or adherence to any foreign prince or power, or do or concur in or adopt any Act whereby he may

become a subject or citizen of any foreign State or power, or become entitled to the rights, privileges, or immunities of a subject of any foreign state or power, or shall become bankrupt, or shall become an insolvent debtor within the meaning of the laws relating to insolvent debtors, or shall become a public defaulter, or be attainted of treason, or be convicted of felony or any infamous crime, his seat in such House shall thereby become vacant.

LI. When and so often as a vacancy shall occur as aforesaid in any seat in the said House of Representatives, it shall and may be lawful for such House to address the Governor, stating the existence of such vacancy and the cause thereof; and the governor, upon receiving such address, shall cause a writ to be issued for supplying such vacancy.

LII. The said Legislative Council and House of Representatives at the first sitting of each respectively, and from time to time afterwards as there shall be occasion, shall prepare and adopt such standing rules and orders as shall appear to the said Council and House of Representatives respectively best adapted for the orderly conduct of the business of such Council and House respectively, and for the manner in which such Council and House respectively shall be presided over in case of the absence of the speaker, and for the mode in which such Council and House shall confer, correspond, and communicate with each other relative to votes or bills passed by or pending in such Council and House respectively, and for the manner in which notices of bills, resolutions, and other business intended to be submitted to such Council and House respectively at any session thereof may be published in the Government Gazette or otherwise for general information for some convenient space or time before the meeting



of such Council and House respectively, and for the proper framing, entitling, and numbering of the bills to be introduced into and passed by the said Council and House of Representatives; all of which rules and orders shall by such Council and House respectively be laid before the Governor, and being by him approved shall become binding and of force, but subject nevertheless to the confirmation or disallowance of Her Majesty in manner hereinafter provided respecting the Acts to be made by the Governor with the advice and consent of the said Legislative Council and House of Representatives; provided that no such rule or order shall be of force to subject any person, not being a member or officer of the Council or House to which it relates, to any pain, penalty, or forfeiture.

LIII. It shall be competent to the said General Assembly (except and subject as hereinafter mentioned) to make laws for the peace, order, and good government of New Zealand, provided that no such laws be repugnant to the Law of England; and the laws so to be made by the said General Assembly shall control and supersede any laws or ordinances in anywise repugnant thereto, which may have been made or ordained prior thereto by any Provincial Council; and any law or ordinance made or ordained by any Provincial Council in pursuance of the authority hereby conferred upon it, and on any subject whereon under such authority as aforesaid it is entitled to legislate, shall, so far as the same is repugnant to or inconsistent with any Act passed by the General Assembly, be null and void.

LIV. It shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to any bill appropriating to the public service any sum of money from or out of Her Majesty's



revenue within New Zealand, unless the Governor on Her Majesty's behalf shall first have recommended to the House of Representatives to make provision for the specific public service towards which such money is to be appropriated; and (save as herein otherwise provided) no part of Her Majesty's revenue within New Zealand shall be issued except in pursuance of warrants under the hand of the Governor directed to the public treasurer thereof.

LV. It shall and may be lawful for the Governor to transmit by message to either the said Legislative Council or the said House of Representatives for their consideration the drafts of any laws which it may appear to him desirable to introduce; and all such drafts shall be taken into consideration in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided.

LVI. Whenever any bill which has been passed by the said Legislative Council and House of Representatives shall be presented for Her Majesty's assent to the Governor, he shall declare according to his discretion, but subject nevertheless to the provisions contained in this Act and to such instructions as may from time to time be given in that behalf by Her Majesty, her heirs or successors, that he assents to such bill in Her Majesty's name, or that he refuses his assent to such bill, or that he reserves such bill for the signification of Her Majesty's pleasure thereon: provided always, that it shall and may be lawful for the Governor, before declaring his pleasure in regard to any bill so presented to him, to make such amendments in such bill as he thinks needful or expedient, and by message to return such bill with such amendments to the Legislative Council or the House of Representatives as he shall think the more fitting; and the consideration of such

amendments by the said Council and House respectively shall take place in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided.

LVII. It shall be lawful for Her Majesty, with the advice of Her Privy Council, or under Her Majesty's signet and sign manual, or through one of her principal Secretaries of State, from time to time to convey to the Governor of New Zealand such instructions as to Her Majesty shall seem meet, for the guidance of such Governor, for the exercise of the powers hereby vested in him of assenting to or dissenting from or for reserving for the signification of Her Majesty's pleasure, bills to be passed by the said Legislative Council and House of Representatives; and it shall be the duty of such Governor to act in obedience to such instructions.

LVIII. Whenever any bill which shall have been presented for Her Majesty's assent to the Governor shall by such Governor have been assented to in Her Majesty's name, he shall by the first convenient opportunity transmit to one of Her Majesty's principal Secretaries of State an authentic copy of such bill so assented to; and it shall be lawful, at any time within two years after such bill shall have been received by the Secretary of State, for Her Majesty, by Order in Council, to declare her disallowance of such bill; and such disallowance, together with a certificate under the hand and seal of the Secretary of State certifying the day on which such bill was received as aforesaid, being signified by the Governor to the said Legislative Council and House of Representatives by speech or message, or by proclamation in the Government Gazette, shall make void and annul the same from and after the day of such signification.

LIX. No bill which shall be reserved for the significa-

tion of Her Majesty's pleasure thereon shall have any force or authority within New Zealand until the Governor shall signify, either by speech or message to the said Legislative Council and House of Representatives, or by proclamation, that such bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and an entry shall be made in the journals of the said Legislative Council and House of Representatives of every such speech, message, or proclamation, and a duplicate thereof, duly attested, shall be delivered to the registrar of the Supreme Court, or other proper officer, to be kept among the records of New Zealand; and no bill which shall be so reserved as aforesaid shall have any force or authority within New Zealand, unless Her Majesty's assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such bill shall have been presented for Her Majesty's assent to the Governor as aforesaid.

LX. The Governor shall cause every Act of the said General Assembly which he shall have assented to in Her Majesty's name to be printed in the Government Gazette for general information, and such publication by such Governor of any such Act shall be deemed to be in law the promulgation of the same.

LXI. It shall not be lawful for the said General Assembly to levy any duty upon articles imported for the supply of Her Majesty's land or sea forces, or to levy any duty, impose any prohibition or restriction, or grant any exemptions, bounty, drawback, or other privilege upon the importation or exportation of any articles or to impose any dues or charges upon shipping contrary to or at variance with any treaty or treaties concluded by Her Majesty with any foreign power.

LXII. The Governor is hereby authorized and required to pay out of the revenue arising from taxes, duties, rates, and imposts levied under any Act or Acts of the said General Assembly, and from the disposal of waste lands of the crown, all the costs, charges, and expenses incident to the collection, management, and receipt thereof; also to pay out of the said revenue arising from the disposal of waste lands of the crown such sums as may become payable under the provisions hereinafter contained for or on account of the purchase of land from aboriginal natives, or the release or extinguishment of their rights in any land, and such sums as may become payable to the New Zealand Company under the provisions of this Act in respect of the sale or alienation of land: Provided always, that full and particular accounts of all such disbursements shall from time to time be laid before the said Legislative Council and House of Representatives.

LXIII. All costs, charges, and expenses, of or incident to the collection, management, and receipt of duties of import and export shall be regulated and audited in such manner as shall be directed by the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland; and all such costs, charges, and expenses in relation to other branches of the said revenue shall be regulated and audited in such manner as shall be directed by laws of the said General Assembly.

LXIV. There shall be payable to Her Majesty, every year out of the revenue arising from such taxes, duties, rates, and imposts, and from the disposal of such waste lands of the Crown in New Zealand, the several sums mentioned in the schedule to this Act; such several sums to be paid for defraying the expenses of the services and purposes mentioned in such schedule, and to be issued by



the Treasurer of New Zealand in discharge of such warrants as shall be from time to time directed to him under the hand and seal of the Governor; and the said Treasurer shall account to Her Majesty for the same through the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, in such manner and form as Her Majesty shall be graciously pleased to direct.

LXV. It shall be lawful for the General Assembly of New Zealand, by any Act or Acts, to alter all or any of the sums mentioned in the said schedule, and the appropriation of such sums to the services and purposes therein mentioned; but every bill which shall be passed by the said Legislative Council and House of Representatives altering the salary of the Governor, or altering the sum described as for native purposes, shall be reserved for the signification of Her Majesty's pleasure thereon; and until and subject to such alteration by Act or Acts as aforesaid the salaries of the Governor and Judges shall be those respectively set against their several offices in the said schedule; and accounts in detail of the expenditure of the several sums for the time being appropriated under this Act, or such Act or Acts as aforesaid of the said General Assembly, to the several services and purposes mentioned in the said schedule, shall be laid before the said Legislative Council and House of Representatives within thirty days next after the beginning of the session after such expenditure shall have been made: Provided always, that it shall not be lawful for the said General Assembly, by any such Act as aforesaid, to make any diminution in the salary of any Judge to take effect during the continuance in office of any person being such Judge at the time of the passing of such Act.



LXVI. After and subject to the payments to be made under the provisions hereinbefore contained all the revenue arising from taxes, duties, rates, and imposts levied in virtue of any Act of the General Assembly, and from the disposal of waste lands of the Crown, under any such Act made in pursuance of the authority herein contained, shall be subject to be appropriated to such specific purposes as by any Act of the said General Assembly shall be prescribed in that behalf; and the surplus of such revenue which shall not be appropriated as aforesaid shall be divided among the several Provinces for the time being established in New Zealand under or by virtue of this Act, in the like proportions as the gross proceeds of the said revenue shall have arisen therein respectively, and shall be paid over to the respective treasuries of such Provinces for the public uses thereof, and shall be subject to the appropriation of the respective Provincial Councils of such Provinces.

LXVII. It shall be lawful for the said General Assembly, by any Act or Acts, from time to time, to establish new electoral districts for the purpose of electing members of the said House of Representatives, to alter the boundaries of electoral districts for the time being existing for such purposes, to alter and appoint the number of members to be chosen for such districts, to increase the whole number of members of the said House of Representatives, and to alter and regulate the appointment of returning officers, and make provision in such manner as they may deem expedient for the issue and return of writs for the election of the members of such House and the time and place of holding such elections, and for the determination of contested elections for such House.

LXVIII. It shall be lawful for the said General As-

sembly, by any Act or Acts, to alter from time to time any provisions of this Act and any laws for the time being in force concerning the election of members of the said House of Representatives, and the qualification of electors and members; provided that every bill for any of such purposes shall be reserved for the signification of Her Majesty's pleasure thereon, and a copy of such bill shall be laid before both Houses of Parliament for the space of thirty days at the least before Her Majesty's pleasure thereon shall be signified.

LXIX. It shall be lawful for the said General Assembly, by any Act or Acts from time to time, to constitute new Provinces in New Zealand, to direct and appoint the numbers of members of which the Provincial Council thereof shall consist, and to alter the boundaries of any Provinces for the time being existing, and to alter the provisions of this Act and any laws for the time being in force respecting the election of members of the Provincial Councils, the powers of such Councils, and the distribution of the said surplus revenue between the several Provinces of New Zealand; provided always, that any bill for any of the said purposes shall be reserved for the signification of Her Majesty's pleasure thereon.

LXX. It shall be lawful for Her Majesty, in and by any letters patent to be issued under the great seal of the United Kingdom, from time to time to constitute and establish within any district or districts of New Zealand one or more municipal corporation or corporations, and to grant to any such corporation all or any of the powers which, in pursuance of the statutes in that behalf made and provided, it is competent to Her Majesty to grant to the inhabitants of any town or borough in England and Wales incorporated in virtue of such statutes or any of them, and to qualify and restrict the exercise of any such

powers in such and the same manner as, by the statutes aforesaid or any of them, Her Majesty may qualify or restrict the exercise of any such powers as aforesaid in England: Provided always, that all provisions of any such letters patent, and all byelaws or regulations made by any such corporation, shall be subject to alteration or repeal by any Ordinance or Act of the Provincial Council for the Province in which any such corporation may be established, or of the General Assembly, according to their respective powers hereinbefore declared.

LXXI. And whereas it may be expedient that the laws, customs, and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within which such laws, customs, or usages should be so observed:

It shall be lawful for Her Majesty, by any letters patent to be issued under the great seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs, or usages to the law of England, or to any law, statute, or usage in force in New Zealand, or any part thereof, in anywise notwithstanding.

LXXII. Subject to the provisions herein contained, it shall be lawful for the said General Assembly to make laws for regulating the sale, letting, disposal, and occupation of the waste lands of the Crown in New Zealand; and all lands wherein the title of natives shall be extinguished as hereinafter mentioned, and all such other lands as are described in an Act of the session holden in the tenth and eleventh years of Her Majesty, chapter one hundred and

twelve, to promote colonization in New Zealand, and to authorize a loan to the New Zealand Company, as demesne lands of the Crown, shall be deemed and taken to be waste lands of the Crown within the meaning of this Act: Provided always, that subject to the said provisions, and until the said General Assembly shall otherwise enact, it shall be lawful for Her Majesty to regulate such sale, letting, disposal, and occupation by instructions to be issued under the signet and royal sign manual.

LXXIII. It shall not be lawful for any person other than Her Majesty, her heirs or successors, to purchase or in anywise acquire or accept from the aboriginal natives land of or belonging to or used or occupied by them in common as tribes or communities, or to accept any release or extinguishment of the rights of such aboriginal natives in any such land as aforesaid; and no conveyance or transfer, or agreement for the conveyance or transfer, of any such land, either in perpetuity or for any term or period, either absolutely or conditionally, and either in property or by way of lease or occupancy, and no such release or extinguishment as aforesaid, shall be of any validity or effect unless the same be made to, or entered into with, and accepted by Her Majesty, her heirs or successors: Provided always, that it shall be lawful for Her Majesty, her heirs and successors, by instructions under the signet and royal sign manual, or signified through one of Her Majesty's principal Secretaries of State, to delegate her powers of accepting such conveyances or agreements, releases or relinquishments, to the Governor of New Zealand, or the Superintendent of any Province within the limits of such Province, and to prescribe or regulate the terms on which such conveyances or agreements, releases, or extinguishments, shall be accepted.



LXXIV. And whereas under and by virtue of the said last mentioned Act, and of a notice given on the fourth day of July one thousand eight hundred and fifty by the New Zealand Company in pursuance of such Act, the sum of two hundred and sixty-eight thousand three hundred and seventy pounds fifteen shillings, with interest after the yearly rate of three pounds ten shillings *per centum* upon the said sum, or so much thereof as shall from time to time remain unpaid, is charged upon and payable to the New Zealand Company out of the proceeds of the sales of the demesne lands of the Crown in New Zealand:

In respect of all sales or other alienations of any waste lands of the Crown in New Zealand in fee simple or for any less estate or interest (except by way of license for occupation for pastoral purposes for any term of years not exceeding seven, and not containing any contract for the renewal of the same, or for a further estate, interest, or license, or by way of reservation of such lands as may be required for public roads or other internal communications whether by land or water, or for the use or benefit of the aboriginal inhabitants of the country, or for purposes of military defence, or as the sites of places of public worship, schools, or other public buildings, or as places for the interment of the dead, or places for the recreation and amusement of the inhabitants of any town or village, or as the sites of public quays or landing places on the sea coast or shores of navigable streams, or for any other purpose of public safety, convenience, health, or enjoyment,) there shall be paid to the said New Zealand Company towards the discharge of the principal sum and interest charged as aforesaid, in lieu of all and every other claim of the said Company in respect of the said sum, except where otherwise hereinafter provided, so long as



the same or any part thereof respectively shall remain unpaid, one fourth part of the sum paid by the purchaser in respect of every such sale or alienation: Provided always, that it shall be lawful for the New Zealand Company, by any resolution of a majority of the proprietors of the said Company present at any meeting of such proprietors, and certified under the common seal of such Company, to release all or any part of the said lands from the monies or payment charged thereon by the said Act or this Act, or any part of such monies or payment, either absolutely or upon any terms or conditions, as such proprietors may think fit.

LXXV. It shall not be lawful for the said General Assembly to repeal or interfere with all or any of the provisions of an Act of the session holden in the thirteenth and fourteenth years of Her Majesty, chapter seventy, entitled "An Act empowering the Canterbury Association to dispose of certain lands in New Zealand," or of an Act passed in the session then next following, chapter eighty-four, to alter and amend the said first-mentioned Act: Provided always, that on the expiration or sooner determination of the functions, powers, and authorities now vested in or lawfully exercised by the said association, the provisions of the present Act shall come into force as regards the lands to which the said Acts relate.

LXXVI. It shall be lawful for the Canterbury Association, at any time after a Provincial Council shall have been constituted under this Act for the Province of Canterbury, to transfer to the said Council all such functions, powers, and authorities, and the said Council is hereby empowered to accept such transfer, upon such terms and conditions as shall be agreed upon between the said Council and the said Association: Provided always, that nothing

contained in such terms and conditions shall interfere with the rights of Her Majesty, her heirs and successors, or of the New Zealand Company respectively; and from and after such time as shall be agreed upon between the said Council and the said Association, the said Council shall have and be entitled to exercise all the said functions, powers, and authorities.

LXXVII. Nothing in this Act or in any Act, law, or ordinance to be made by the said General Assembly, or by any Provincial Assembly, shall affect or interfere with so much of an Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter eighty-six, entitled "An Act to regulate the affairs of certain settlements established by the New Zealand Company in New Zealand," as relates to the administration of the fund for the public purposes of the settlement of Nelson.

LXXVIII. And whereas certain terms of purchase and pasturage of land in the settlement of Otago had been issued by the New Zealand Company before the fourth day of July one thousand eight hundred and fifty, and the said terms, or part of them, were in force on that day as contracts between the New Zealand Company and the Association of lay members of the Free Church of Scotland, commonly called the Otago Association: And whereas by the provisions of the said Act of the tenth and eleventh years of Her Majesty, and of the said notice given by the New Zealand Company, the lands of the said Company in New Zealand reverted to and became vested in Her Majesty as part of the demesne lands of the Crown, subject nevertheless to any contract then subsisting in regard to any of the said lands: And whereas it is expedient that provision should be made to enable Her Majesty to fulfil

the contracts contained in such terms of purchase and pasturage as aforesaid:

It shall be lawful for Her Majesty for that purpose to make provision, by way of regulations to be contained in any charter to be granted to the said Association, for the disposal of the lands to which the said terms of purchase and pasturage relate, so far as the same are still in force as aforesaid, and for varying from time to time such regulations, with such consent by or on behalf of the said Association as in any such charter or instructions shall be specified, and for fixing the boundaries thereof, and for enabling the said Association to transfer its powers to the Provincial Council for the Province of Otago: Provided always, that no such charter shall be granted or have effect for any longer term than ten years from the passing of this Act; but one of Her Majesty's principal Secretaries of State may at any time during the term for which such charter shall be granted, by writing under his hand, extend the term for which such charter shall have been granted for such further time as in his discretion he may think fit: Provided always, that it shall not be lawful for Her Majesty, by any such regulations as aforesaid, to diminish the sum now payable to the New Zealand Company in respect to all waste land sold under the said terms of purchase, unless with the consent of the New Zealand Company, signified as hereinbefore provided; and during the continuance of such charter as aforesaid, it shall not be lawful for the said General Assembly to repeal or interfere with any such regulations respecting lands in Otago, except with such consent by or on behalf of the Otago Association as in any such charter or instructions may be provided, and (so far as the rights of the New

Zealand Company may be affected) with the consent of such Company signified as hereinbefore provided; and every bill which shall repeal or interfere with any such regulations shall be reserved for the signification of Her Majesty's pleasure thereon.

LXXIX. It shall be lawful for Her Majesty, by any such letters patent as aforesaid, or instructions under Her Majesty's signet and sign manual, or signified through one of Her Majesty's principal Secretaries of State, to delegate to the Governor any of the powers hereinbefore reserved to Her Majesty respecting the removal of Superintendents of provinces, and the regulation of the sale, letting, disposal, and occupation of waste lands, the establishment of municipal corporations, and the preservation of aboriginal laws, customs, and usages.

LXXX. In the construction of this Act the term "Governor" shall mean the person for the time being lawfully administering the Government of New Zealand; and for the purposes of this Act "New Zealand" shall be held to include all territories, islands and countries lying between thirty-three degrees of south latitude and fifty degrees of south latitude, and one hundred and sixty-two degrees of east longitude and one hundred and seventy-three degrees of west longitude reckoning from the meridian of Greenwich.

LXXXI. This Act shall be proclaimed in New Zealand by the Governor thereof within six weeks after a copy of such Act shall have been received by such Governor, and, save as herein expressly provided, shall take effect in New Zealand from the day of such proclamation thereof.

LXXXII. The proclamation of this Act, and all proc-



lamations to be made under the provisions thereof, shall be published in the New Zealand Government Gazette.

Schedule referred to in the foregoing Act.

Governor .....	£2,500
Chief Justice .....	1,000
Puisne Judge .....	800
Establishment of the General Government .....	4,700
Native Purposes .....	7,000
	<hr/>
	£16,000

## DESPATCH FROM THE COLONIAL SECRETARY TO THE ACTING GOVERNOR IN NEW ZEALAND AUTHORIZING THE ESTABLISHMENT OF RESPONSIBLE GOVERNMENT <sup>1</sup>

December 8, 1854

I HAVE to acknowledge your despatches of the numbers and dates specified in the margin, reporting the proceedings which have taken place in the General Assembly of New Zealand on the subject of the future Executive Government of the Colony.

As regards the most important portion of that subject, I have taken the earliest opportunity of informing you that Her Majesty's Government have no objection whatever to offer to the establishment of the system known as responsible government, in New Zealand. They have no reason to doubt that it will prove the best adapted for developing the interests as well as satisfying the wishes of the community. Nor have they any desire to propose terms, or to lay down restrictions on your assent to the measures which may be necessary for

<sup>1</sup> Commons Papers, 1854-55, vol. 38, No. 160, p. 39.



that object, except that of which the necessity appears to be fully recognised by the General Assembly, namely, the making provision for certain officers who have accepted their offices on the equitable understanding of their permanence, and who may now be liable to removal. The only officers mentioned in your despatches as likely to fall within this category, are the Colonial Secretary and Treasurer, and the Attorney General, nor am I myself aware of any others; but I do not wish to fetter your discretion, if further consideration makes it, in your opinion, desirable to alter the list.

Should the arrangements made for this purpose be in your judgment satisfactory, you are authorized to admit at once the new holder of office under the responsible system, reporting their names for confirmation in the usual manner. There will be no occasion, on this supposition, for a further reference to the home Government before the change is carried into effect. But if the arrangements proposed should not meet your approval, which I trust will not be the case, the appeal to the home Government for ultimate decision will be unavoidable.

The preliminary steps for the introduction of responsible government being thus few and plain, I do not understand the opinion which some portions of this correspondence appear to convey, and which is supported by the language of your address of 31st August, that legislative enactment by the General Assembly is required to bring the change into operation. In this country the recognised plan of Parliamentary government, by which Ministers are responsible to Parliament, and their continuance in office practically depends on the votes of the two Houses, rests on no written law, but on usage only. In carrying a similar system into effect in the North American Colon-

ies legislation has indeed been necessary, to make a binding arrangement for the surrender by the Crown of the territorial revenues, which has generally formed part of the scheme, and for the establishment of a civil list, but not for any other purpose. In New Zealand the territorial revenue has already been ceded to the Assembly, and Her Majesty's Government have no terms to propose with reference to the civil list already established. Unless, therefore, there are local laws in existence which would be repugnant to the new system, legislation seems uncalled for, except for the very simple purpose of securing their pensions to retiring officers; and if uncalled for, such legislation is objectionable, because the laws so enacted would probably stand in the way of the various partial changes which it might be necessary to adopt in the details of a system in its nature liable to much modification.

The shortness of the time at my command, as I am anxious to answer your despatches by the present mail, prevents me from entering on the details of the narrative contained in your despatches; nor, indeed, does there appear any necessity for my doing so; I am satisfied that you acted to the best of your judgment under the circumstances in which you were placed; and it gives me much pleasure to find that the ultimate result of the deliberations of the General Assembly has been the adoption of the ordinary and most satisfactory course, namely, that of referring the question of responsible government to Her Majesty's Minister for complete adjustment, instead of putting it partially in practice, and leaving some important question bearing on it undecided.

There are passages in your address already referred to, of 31st August, to the General Assembly, after its prorogation, to which I feel it my duty shortly to advert.

You appear in that address to have especially called the attention of the Assembly to the expediency of legislation on a subject upon which they could not, by the constitution, legislate at all; I refer to the proposal for rendering the Legislative Council elective. It is also extremely doubtful whether the proposed measure for authorizing the superintendents to dissolve Provincial Councils, a function reserved by section 13 of the Constitutional Act to the Governor, is within the powers of the General Assembly. So, too, the constituting Auckland as a separate government, under a Lieutenant Governor, and with exclusive powers of legislation, if I rightly understand what is meant by the proposal, is also a measure which it would be beyond the power of that body to carry into execution. You appear also to propose the foundation of a new federal convention (apart from the General Assembly), which would be an innovation irreconcilable with the existing fundamental law.

I do not now enter on the question of the expediency of these several schemes, but I am anxious to call your attention to the inconvenience of inviting the Legislature to originate measures to which the Crown could not assent, as such assent would be invalid.

The views of Her Majesty's Government on these points will be communicated to the Governor, who will, I hope, shortly proceed to New Zealand, but as you have yourself conducted the proceedings reported in your present despatches, and I am very desirous to avoid unnecessary delay, I have no hesitation in authorising you to act in person on my present instructions.

REPORT OF THE ACTING GOVERNOR ON  
RECEIPT OF THE FOREGOING DESPATCH <sup>1</sup>

May 31, 1855

HAVING consulted my Executive Council as regards the steps most advisable to pursue in order to carry out responsible Government in this Colony, I have now the honor to enclose for your information an extract from the minutes of the Council, as well as the Gazette, containing a copy of a circular addressed to the members of the General Assembly, by which you will perceive I have decided on meeting that body on the day appointed, viz., the 5th July next, for the purpose of bringing forward a bill, of the nature required by your despatch, No. 39, of the 8th December 1854, and of making provision for the public service, till responsible ministers shall have had time to take upon themselves the government of the country, reserving the question of dissolution, in the event of its being found advisable to give the constituency an opportunity of electing members under the new form of government, when in all probability the Governor will have arrived, furnished with the views of Her Majesty on the points adverted to in your despatch above quoted.

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 119.



EXTRACT FROM THE MINUTES OF THE  
EXECUTIVE COUNCIL <sup>1</sup>

May 25, 1855

HIS Excellency the Officer administering the Government called the attention of the Council to the despatch, No. 39, of the 8th December 1854, respecting responsible Government for New Zealand, and requested advice as to the meeting of the General Assembly, which at present stands prorogued to the 5th July next.

It appeared to the Council, after due consideration, that the course most desirable to be pursued would be to allow the General Assembly to meet on the 5th July next, the day to which it was prorogued, to submit to them, then, simply, two bills, one the necessary preliminary before "responsible government" can be established, and the other granting the continuation of the expenditure, upon the present estimates, for a specified period. It may then become a question whether the proper course will not be to dissolve the Assembly, to afford the constituencies an opportunity of electing members with a view to the new form of government; the impression is that it would be the proper course. At all events, a prorogation for some time will be required to enable a responsible ministry to make the necessary preparations to meet the Assembly.

<sup>1</sup> *Ibid.* Enclosure in the foregoing Report.

## CIRCULAR TO THE MEMBERS OF THE GENERAL ASSEMBLY <sup>1</sup>

May 31, 1855

Auckland, 31st May 1855

HIS Excellency the Officer administering the Government has directed that the following circular, addressed to the members of the General Assembly in the Southern Provinces, and the accompanying despatch from the Secretary of State, should be published for general information:

### CIRCULAR

By command of his Excellency the Officer administering the Government, I have the honor to inform you that Mr. Carkeek, the Collector of Customs at Wellington, has been instructed to make arrangements for the conveyance of yourself and other Members of the General Assembly from the Southern Provinces to Auckland, for the approaching session, on the 5th of July next.

Some uncertainty exists as to the means of conveyance that may be available for that purpose, in consequence of the proprietors of the "Nelson" steamer having declined to renew the contract for continuing steam communication between the several Provinces of the Colony, and should the Collector of Customs at Wellington fail to procure the required means of conveyance in due time, or should any other obstacle arise to prevent Members of the General Assembly reaching Auckland at the time appointed, I have to inform you that his Excellency will be prepared

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 119. Announced by the Colonial Secretary in Auckland (enclosure in the Report).

to prorogue the opening of the session. Mr. Carkeek has been directed to inform you of the arrangements alluded to so soon as they are completed.

As his Excellency conceives that it may be convenient to members to be informed of the course which his Excellency proposes to pursue on the opening of the Assembly, I have the honor to state, that it is his Excellency's wish that responsible government should be established at the earliest convenient time, and with that view he will cause to be laid before the Assembly a bill of the nature required by the despatch from the Secretary of State on the subject, dated 8th December 1854, a copy of which is annexed. The only other business, as it appears to his Excellency, that it will be requisite for the Assembly at once to deal with, will be to make temporary provision (probably by the renewal of the present appropriations for a limited period) for the public service till a responsible ministry shall have had time to take upon themselves the government of the country, and be enabled to meet the Assembly after sufficient time shall have been afforded for the requisite preparation. Having disposed of these measures, it is not his Excellency's present intention to propose any other; and, in order to afford the electors an opportunity of choosing members with a view to the new form of government, his Excellency is of opinion that the dissolution of the Assembly ought to take place immediately afterwards. Should this, however, on further consideration, not be deemed advisable, it still appears to his Excellency indispensable that the Assembly should be prorogued for some months, in order that the responsible ministry may be afforded sufficient time to make themselves acquainted with the affairs of the Colony and to prepare such measures as they may deem necessary to propose to the Assembly.

## REPORT OF THE ACTING GOVERNOR ON OPENING THE GENERAL ASSEMBLY<sup>1</sup>

August 10, 1855

REFERRING to my despatch of the 5th ultimo, No. 77, I now do myself the honor of enclosing, for your information, the accompanying copy of an address I opened the General Assembly with on the day appointed, namely, the 8th instant, by which it will be perceived that my first desire has been to carry out the instructions from the Secretary of State, with a view to the complete establishment of responsible government in New Zealand; and then, after securing an appropriation of the revenue for so long as may be deemed necessary, to leave to another session of the General Assembly, as soon as the constituencies shall have had an opportunity of electing those in whom they place confidence, every other subject involving questions of policy, on which his Excellency Colonel Gore Browne will, no doubt, be furnished with instructions.

. . . . .

## ADDRESS OF THE ACTING GOVERNOR IN OPENING THE GENERAL ASSEMBLY<sup>2</sup>

August 8, 1855

HONORABLE Gentlemen of the Legislative Council, and  
Gentlemen of the House of Representatives.

When I prorogued the General Assembly of New Zea-

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 135.

<sup>2</sup> *Ibid.*, p. 136. Enclosure in the Report of August 10.



land in the month of September last, I did not then entertain an expectation that it would become my duty to be present, in the same capacity, at the opening of another session.

It is, however, a source of great satisfaction to me that it has pleased Her Majesty to permit me to continue in the Government of this Colony sufficiently long to see the accomplishment of that ample measure of self-government which this Assembly, and I believe the colonists in general, have so ardently desired.

Whatever may have been the differences of opinion during the former sessions of this Assembly, as to the time or the manner of introducing without reserve, "ministerial responsibility" in the conduct of the legislative and executive proceedings of the Government, we were all, I feel assured, sincerely anxious that the colonists of New Zealand should have conferred on them, without unnecessary delay, the advantages of that form of government in its integrity.

At the close of the session it became my duty to transmit to the Secretary of State the representations which I had received praying for the establishment of responsible government, and it afforded me much gratification to add my earnest recommendation in favor of granting that which I believe will be highly conducive to the welfare and advancement of the Colony.

On its being communicated to me that Her Majesty's Imperial Government had complied with our wishes, I took the earliest opportunity of making known that fact to the Colony by the publication in the "Government Gazette" of an extract from the Secretary of State's despatch, and since then I have placed in your hands a copy of that despatch, in order that you might be made aware of the

preliminary measures which are required to be taken by the General Assembly, and of the views of Her Majesty's Government on the subject.

GENTLEMEN of the Assembly,

It now rests with you to take the next step; on my part I can assure you that whatever remains to be done by me for the complete and satisfactory establishment of responsible government, will, without hesitation, be most cheerfully performed.

I do not anticipate that the present session need be a protracted one. Legislation on important subjects, not at the same time urgent, will not, it appears to me, be desirable in our present state of transition.

It has been communicated to me by the Secretary of State for the Colonies, that I may shortly expect my successor in the Government, and it has also been intimated to me that he has been placed in possession of the views of Her Majesty's Imperial Government on several of the most important subjects which engaged the attention of this Legislature during its former sessions. Not only these subjects, but indeed every other involving any important question of policy, would, I think, be more properly dealt with after the Executive Government of the country shall have passed into the hands of those with whom will rest the responsibility of administering the laws which shall be enacted.

In the present position of the affairs of the Colony, the most suitable course, as it appears to me, would be to limit the business of the session to what is absolutely necessary to be done, and that another session of the General Assembly should be held as soon as the constituencies shall

have had an opportunity of electing those in whom they place confidence, and the ministry which shall be formed shall have been enabled to make due preparation for meeting the Legislature.

Entertaining these views, it is my intention to lay before you only two measures for your consideration; the one, of the nature indicated by the Secretary of State's despatch, with a view to the complete establishment of responsible government; and the other, for the appropriation of the revenue for so long as may be deemed necessary to afford a responsible ministry time to lay their financial policy before the Assembly.

I am not aware that there is any other business so urgent as to demand immediate attention, or indeed that would not be better left to be disposed of after the contemplated changes in the Government shall have taken place.

I trust, Gentlemen of the Assembly, I need hardly assure you that, during the short time it yet remains for me to administer the Government of this Colony, I shall feel it a pleasure, as well as my duty, to afford my humble but earnest cooperation in all measures calculated to promote the welfare and happiness of both races of Her Majesty's subjects.

## REPORT OF THE ACTING GOVERNOR UPON THE RECEPTION OF HIS ADDRESS BY THE GENERAL ASSEMBLY <sup>1</sup>

August 11, 1855

I HAVE the honor to transmit herewith the accompanying copies of the replies received from the Legislative

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 138.

Council and House of Representatives to my opening address.

2. As the tenor of these replies is in unison with the views I proposed, and as they convey concurrence with the steps taken for the preservation of peace at New Plymouth, I trust they may prove more than ordinarily acceptable to your Lordship, and bear me out with the authorities at home in the arrangements I have made under such very peculiar and trying circumstances.<sup>1</sup>

## REPLY OF THE LEGISLATIVE COUNCIL TO THE ADDRESS <sup>2</sup>

August 11, 1855

May it please your Excellency,

We, the Legislative Council of New Zealand, in reply to the speech with which your Excellency has opened the third session of the General Assembly, beg respectfully to assure you of our continued desire to afford your Excellency every cooperation and support so long as your Excellency may be called upon to administer the Government of New Zealand.

As regards the principle of responsible government, which your Excellency informs us will shortly come into operation, we feel grateful that Her Majesty has been graciously pleased to accede to the prayer of the Legislature, and has sanctioned the introduction of that element in all its integrity into the Government of the Colony.

<sup>1</sup>The Acting Governor had attempted to establish ministerial government in 1854 to meet the demands of the colonists but was unsuccessful because of inadequate powers; cf., Commons Papers, 1854-55, vol. 38, No. 160, pp. 1-38, 41-42.

<sup>2</sup>Commons Papers, 1860, vol. 46, No. 2719, p. 138. Enclosure in the Report of August 11.



We beg to assure your Excellency that we shall be prepared to afford our aid towards its complete and satisfactory establishment.

. . . . .

In conclusion, your Excellency may be assured that we shall be prepared, as heretofore, to afford our careful attention to any measures that may be submitted for our consideration in the course of the session.

## REPLY OF THE HOUSE OF REPRESENTATIVES <sup>1</sup>

August 11, 1855

WE, the Commons of New Zealand, assembled in their House of Representatives, have received with sentiments of high respect the speech addressed to us by your Excellency at the opening of the present session.

We desire to convey to your Excellency our acknowledgements for the efforts made by you towards obtaining from the Imperial authority the establishment of responsible government for this Colony.

. . . . .

<sup>1</sup> *Ibid.* Enclosure in the Report of August 11.

## REPORT OF THE GOVERNOR UPON THE DISSOLUTION OF THE GENERAL ASSEMBLY <sup>1</sup>

September 18, 1855

THE business of the third session of the General Assembly having come to a close, I now do myself the honor of transmitting for your Lordship's information a copy of the address I delivered to that body, on Saturday the 15th instant.

2. Having been advised by my Executive Council that a dissolution of the House of Representatives was very desirable, if not imperative, in consequence of the number (fifteen) of seats vacated, I acted on that advice, and dissolved it by proclamation as enclosed.

## ADDRESS OF THE GOVERNOR TO THE LEG- ISLATIVE COUNCIL AND HOUSE OF REPRESENTATIVES <sup>2</sup>

September 15, 1855

I CONSIDER myself fortunate in having arrived in New Zealand at a time when the General Assembly is in session, as it affords me an opportunity of stating the views I entertain on certain subjects.

The communication, which I took the earliest opportunity of laying before the two Houses, will have satisfied

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 149.

<sup>2</sup> *Ibid.* Enclosure in the Report of September 18.

you that it is the desire of Her Majesty's Government that this Colony shall enjoy the fullest measure of self-government which is consistent with its allegiance to the British Crown. Nor are these sentiments confined to any particular party in the Imperial Parliament, but are shared in by those who differ on most other subjects.

Animated by the same feeling, I am prepared to carry out in its integrity the principle of ministerial responsibility, being convinced that any other arrangement would be ineffective to preserve that harmony between the legislative and the executive branches of the Government which is so essential to the successful conduct of public affairs.

Entertaining these views, it will be my object to secure, as early as possible, the introduction of this form of Government, which has been so earnestly solicited by the popularly constituted Legislature of this Colony. Indeed, the public interest demands that the present state of transition should be allowed to continue no longer than circumstances peremptorily require.

As soon as the necessary arrangements have been made, I shall be prepared to give my confidence to those gentlemen who possess that of the Legislature, and whenever changes may become necessary, I shall permit neither private interests nor private friendships to influence my public conduct.

GENTLEMEN of the House of Representatives.

I HAVE much pleasure in thanking you for the liberal provision you have made for the public services, and you may rest assured that the supplies voted shall be expended with the utmost economy consistent with efficiency.

GENTLEMEN of the Assembly.

UNDER the peculiar circumstances of the present session, legislation has not been of an important character.

Questions of great public interest have not been dealt with; these have been rightly deferred until they can be considered by a Legislature more fully attended, and assisted in their deliberations by a responsible Ministry.

All the bills which have been passed by the Assembly I have had much pleasure in assenting to on behalf of Her Majesty, and I trust these measures will be found to effect beneficial changes in the law.

In the position in which I now am it would be impossible to deal satisfactorily with many subjects of importance. I shall therefore defer all matters not requiring immediate attention until the contemplated change in the Government shall have taken place.

In the exercise of the power conferred upon me by the Constitution Act, it is my intention to dissolve this Assembly without delay.

In the absence of any measures on the part of the General Assembly determining otherwise, the next session will be convened and held in Auckland, as soon as it may be convenient to the members from the distant provinces to leave their private affairs.

It is my earnest hope and belief that the several constituencies of the Colony, duly appreciating their responsibility, and guided by an all wise Providence, will exercise their important functions in the manner best calculated to secure the services of Representatives who will efficiently aid me in my endeavors to develop the resources of the country, to elevate the moral and social condition of its inhabitants, to preserve that perfect civil freedom and



religious equality which is now enjoyed by all classes and denominations of Her Majesty's subjects, and by these means to promote the happiness and increase the prosperity of the people of this favored Colony.

I now prorogue this Assembly until the first day of October 1855.

## REPORT OF THE GOVERNOR ON OPENING THE GENERAL ASSEMBLY <sup>1</sup>

April 18, 1856

I HAVE the honor to forward for your information the address with which I opened the fourth session of the General Assembly on the 15th instant.

## ADDRESS OF THE GOVERNOR TO THE GENERAL ASSEMBLY <sup>2</sup>

April 15, 1856

HONORABLE Gentlemen of the Legislative Council, and  
Gentlemen of the House of Representatives.—

Various causes prevented the last Assembly from legislating on many subjects materially affecting the welfare of the Colony, and it has been reserved for you to undertake that important duty.

Questions involving numerous conflicting interests remain for your consideration and adjustment, and in the solution of these difficulties an arduous task awaits you.

To enable me to call to my councils advisers possessing the confidence of the General Assembly is naturally a subject

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<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 197.

<sup>2</sup> *Ibid.* Enclosure in the Report of April 18.

which will engage your earliest attention. This may be considered the corner stone on which all other legislation should be built; and I now repeat in the most explicit terms the assurance which I gave on the prorogation of the last Assembly, that I would give my confidence to the gentlemen who possess that of the Legislature, and that whenever changes become necessary I would allow no personal feelings to influence my public conduct.

I doubt not that the gentlemen who accept from you a responsibility conferring such an honorable distinction on themselves will consign to forgetfulness all of the past which has no reference to the future; that they will arm themselves with a determination to disregard all private interests, and, devoting themselves heart and soul to those of New Zealand, they will declare what ought to be enacted for the welfare of the Colony at large.

Such conduct will ensure respect from opponents and the esteem of Englishmen, not only in this Colony but throughout the Empire; not only at the present time but in the future, when party feelings and local interests have been obliterated or forgotten, and history records the strength or weakness of those who guided the infant steps of a great country.

If, on the contrary, the men chosen for this honorable trust should prove unequal to it, looking for the applause and preferring the interests of a party or a province to that of the Colony at large, then will the power they are unable to wield remain but a moment in their nerveless grasp, and, once released, it will oscillate backward and forward until seized on by some statesmen worthy of their adopted country, strong in the rectitude and integrity of their intentions, and regardless of all considerations which can in any way hinder the progress of the public weal.

Such are the men whose counsel I desire, and by whose advice I hope to be guided.

I rely entirely on your patriotic aid, and feel assured that, however divided you may be by political or party feelings, your best efforts will always be directed to secure the interests of the inhabitants of this country, mindful that their welfare depends on our efficient and faithful exercise of the powers vested in us by the Imperial Government.

. . . . .  
GENTLEMEN of the Assembly.—

. . . . .  
Free institutions, deeply graven in the hearts of Englishmen, the glory of the British nation, framed, amended, and maintained by the wisdom and perseverance of successive generations, have devolved on you as an inheritance. To them we owe much of that enterprise and independence which have been and are the characteristics of our nation in all parts of the world. They have been transplanted for you in their maturity, and their broad shadow spreads already over this favored land.

The history of the growth of these institutions during a thousand years in our native country would be but a tale that is told, and the retrospect of the past but an idle dream, if they teach us no lessons of wisdom. May we profit by them; and when time has consigned all who now hear me to the stillness of the grave, and children's children have succeeded to the inheritance of their fathers, may those who will then review the acts of this Assembly feel for you that admiration and esteem which we cannot withhold from the time-honored men to whom we owe our origin and our laws.

## REPORT OF THE GOVERNOR ON THE ESTABLISHMENT OF RESPONSIBLE GOVERNMENT <sup>1</sup>

April 30, 1856

I HAVE the honor to inform you that on the day previous to the meeting of the Assembly on the 15th instant, I addressed the accompanying letter, marked No. 1, to Mr. Sewell, who is the senior of the gentlemen who held office on similar terms during the first session of the Assembly, and who had at the time of their retirement a large majority in their favor. Mr. Sewell accepted the invitation, and I then placed in his hands the "minute" marked No. 2. Having associated with him Messrs. Whitaker, Bell, and Tancred, this minute was discussed and explained in a "memorandum," marked No. 3. Both documents were then signed and agreed to by Mr. Sewell and Mr. Whitaker the Attorney General, on the full understanding that the terms were subject to alteration and amendment by the Secretary of State, but not until his decision shall have been received.

2. The Assembly having been prorogued for a few days, met again on the 25th instant, when I addressed to the House of Representatives a message (*vide* enclosure No. 4.), recommending pensions for those members of the Executive Council whose retirement is a necessary preliminary to the formation of responsible government.

3. On the motion being brought forward that the House should enter upon the consideration of this message, Mr. Sewell, in a speech of considerable length, and which I

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 208.



forward as reported in one of the local newspapers, made a statement of the policy of the Government he was attempting to form.

4. I regret that the immediate departure of the mail prevents my giving you further information on this subject than that the "Pension Bill" has been read a second time, and that it is at present referred to a Committee of the whole House for the purpose of deciding what amount of pension shall be granted to the retiring officers.

5. At present I can only add that the gentlemen mentioned above, namely, Henry Sewell, Frederick Whitaker, Francis Dillon Bell, and Henry John Tancred, Esquires, have taken the prescribed oaths as members of the Executive Council, and that the three former will, as soon as the "Pension Bill" is passed, assume the several offices of Colonial Secretary, Attorney General, and Colonial Treasurer. Mr. Tancred, who is a member of the Legislative Council, will have a seat in the Executive Council, but without holding office.

6. I trust that by the next mail responsible government will have been fully established, and that I shall be enabled to submit satisfactory arrangements for Her Majesty's approval and confirmation.

#### ENCLOSURE No. 1

Auckland, *April 14, 1856.*

THE Governor presents his compliments to Mr. Sewell. He would be obliged if Mr. Sewell will confer with him on the subject of a responsible ministry.

Having determined on maintaining a perfect neutrality in all party questions, the Governor thinks it right to say that he makes this request to Mr. Sewell, having been one

of the ministry of which Mr. Fitzgerald (now absent) was the chief, and which possessed the confidence of the Assembly when they retired from office.

ENCLOSURE No. 2

*April 15, 1856.*

THE view the Governor takes of the relation between himself and his responsible advisers is as follows:

1st. In all matters under the control of the Assembly, the Governor should be guided by the advice of gentlemen responsible to that body, whether it is or is not in accordance with his own opinion on the subject in question.

2d. On matters affecting the Queen's prerogative and imperial interests generally, the Governor will be happy to receive their advice, but when he differs from them in opinion he will (if they desire it) submit their views to the consideration of Her Majesty's Secretary of State, adhering to his own until an answer is received.

Among imperial subjects the Governor includes all dealings with the native tribes, more especially in the negotiation of purchases of land.

He will receive and act on the advice of his responsible advisers in reference to the amount of money they may desire to have expended in any one year in the purchase of land, but beyond this he considers himself bound to act on his own responsibility.

The Governor alone is responsible to Her Majesty for the tranquility of the Colony, which would be endangered by the ordinary and inevitable change of opinion consequent on a change in his advisers.

It follows as a necessary consequence of these views, that the Chief Land Purchase Commissioner and his subordinates must take their orders from the Governor alone.

Before giving his assent to Acts passed by Provincial Councils and other matters of a legal nature, the Governor will require the annexed certificate from the Colonial Secretary and Attorney General; and in approving appointments to vacant offices, he will require to be assured that the gentlemen recommended are fit and eligible for their respective situations.

### ENCLOSURE No. 3

#### *Memorandum*

(a) IN explanation of paragraph No. 1, the Governor of course reserves to himself the same constitutional rights in relation to his ministers as are in England practically exercised by the Sovereign.

(b) In further explanation of the same paragraph, he intends by the term "matters under the control of the Assembly," all matters whatever relating to the government of the Colony not referred to in paragraph No. 2.

(c) In explanation of paragraph No. 2, the Governor refers to clauses 19, 20, and 21 of the royal instructions accompanying his commission, which oblige him as a general rule to take advice in all matters with his Executive Council. He considers such rule as applying to the subject referred to in paragraph No. 2, and he will not object (having the Queen's sanction to that effect) to limit the members of the Executive Council to his responsible ministers.

(d) In explanation of the 4th paragraph, the Governor would observe, that he feels no objection to the House of Representatives defining the specific lands to be purchased, it being, however, understood, that it is not to be

compulsory on the Governor to make purchases, if in his opinion political reasons render it inexpedient to do so.

ENCLOSURE No. 4

*Message*

THE Governor transmits to the House of Representatives for their consideration the draft of a bill to provide for the retirement of certain officers of the Executive Government.

The object of this bill is to prepare the way for the introduction of responsible government, by providing for the retirement of the gentlemen who now hold the offices of Colonial Secretary, Attorney General, and Colonial Treasurer, and who were appointed on the tacit understanding that they would be permanent.

The Governor does not propose any specific amount of pensions, but trusts that the House of Representatives will adopt a scale of compensation somewhat similar to that which has been adopted and approved in other British colonies.

Should the bill pass into law, no time shall be lost in carrying it into effect.



## ENCLOSURE No. 5

*Pensions Act*

In the nineteenth year of the reign of Her Majesty  
Queen Victoria.

## ANALYSIS

Title

Preamble

1. Governor may remove from office A. Sinclair, W. Swainson, and A. Shepherd.
  2. Annuities to be paid on their ceasing to hold office.
  3. To be paid quarterly.
  4. Out of general revenue.
- Schedule.

A bill to provide for the retirement of certain officers of the Executive Government.

WHEREAS the offices of Colonial Secretary, Attorney General, and Colonial Treasurer of New Zealand will hereafter be held by officers who will be liable from time to time as occasion shall require to retire or be released from office on political grounds: And whereas Andrew Sinclair, Esq., the Colonial Secretary, William Swainson, Esq., the Attorney General and Alexander Shepherd, Esq., the Colonial Treasurer, the present holders of the said offices, were respectively appointed thereto on the equitable understanding that their tenure of the same would be permanent, and it is therefore just that a suitable provision should be made for them on their retiring or being released therefrom: Be it therefore enacted by the General Assembly of New Zealand as follows:

1. Whenever it shall appear to the Governor that it would be expedient on political grounds that the said Andrew Sinclair, William Swainson, and Alexander Shepherd, or any of them, should cease to hold office as aforesaid, it shall be lawful for the Governor to remove them or him therefrom.

2. To every of them the said Andrew Sinclair, William Swainson, and Alexander Shepherd, on ceasing to hold office, either by such removal or by resignation of office at the request of the Governor, there shall be paid an annuity or pension for the term of his natural life after the rate set opposite to his name in the schedule hereunto annexed.

3. The said annuities or pensions shall commence on the several days on which the said Andrew Sinclair, William Swainson, and Alexander Shepherd shall respectively cease to hold office as aforesaid; and shall be paid quarterly, (that is to say), on the first day of January, the first day of April, the first day of July, and the first day of October in every year.

4. The said annuities or pensions shall issue and be paid out of the general revenue of the Colony of New Zealand, and the acquittances and receipts of the said Andrew Sinclair, William Swainson, and Alexander Shepherd respectively, or of such person or persons as they shall respectively authorize and appoint to receive the same or any part or parts thereof, shall be good and sufficient discharges for the amounts therein respectively expressed to be paid.

#### *Schedule*

Andrew Sinclair, Colonial Secretary	- -	£——
William Swainson, Attorney General	- -	£——
Alexander Shepherd, Colonial Treasurer	-	£——

## FURTHER REPORT ON THE ESTABLISHMENT OF RESPONSIBLE GOVERNMENT <sup>1</sup>

May 8, 1856

IN continuance of my despatch, No. 43, of the 30th ultimo, I have the honor to inform you, that on the 1st instant the House of Representatives again discussed the "Pension Bill." After a long debate, in which various indefinite changes were proposed, Mr. Sewell informed me that the House was of opinion the pensions awarded should be one half of the respective salaries of the retiring officers. I then gave him the enclosed memorandum of my opinion on the subject, which he read to the House on the 2d instant; after which the accompanying "Pension Bill" was passed almost unanimously, and in a manner very gratifying to me as Her Majesty's representative.

2. The Bill having been affirmed in the Legislative Council, I assented to it on the 7th instant, and it has now become law.

3. Consequent on the above, I have the honor to report that the Colonial Secretary, Dr. Sinclair, and the Colonial Treasurer, Mr. Shepherd, have resigned their offices; and that on the same day (the 7th instant) Henry Sewell, Esq., took the "oath of office" as Colonial Secretary, and Francis Dillon Bell, Esq., that of Colonial Treasurer.

4. Mr. Swainson, who has hitherto held the office of Attorney General, being absent on leave in England, I have, with the advice of my Executive Council, cancelled his appointment, and issued a commission to Frederick Whitaker, Esq., who, as a responsible adviser, took the "oath

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 211.

of office " as Attorney General at the same time as the two gentlemen mentioned above.

5. The difficulties which have elsewhere beset the introduction of responsible government have thus been happily removed; and I beg to submit the above arrangements for Her Majesty's favorable consideration and approval.

## ENCLOSURE

### *Memorandum*

I HAVE read Mr. Sewell's speech carefully (as reported in the "Southern Cross"); it accurately represents my views on the subject of the pensions.

Since the meeting of the House, I have, for the first time, heard definite accusations which could be recognized against the gentlemen whose retirement is in question.

I have no desire to shield them if they have been guilty of malversation of office, and if the House will furnish me with sufficient proof thereof I will recommend the Secretary of State to remove them summarily and without pension.

Failing any proof of misconduct, I revert to the terms stated in Mr. Sewell's speech.

Having reference to what has been done in other Australian Colonies, as stated by Mr. Sewell, and remembering that those gentlemen are called on to retire, not for their own convenience, but for that of the public, I am of opinion that their retiring pensions should not be less than two-thirds of their salaries. The House is of opinion that it should be one-half. The time has therefore arrived for a reference to Her Majesty's Government.

I will give my assent to the Pension Bill if it assigns pensions to be fixed by Her Majesty's Government not exceeding two-thirds of their present salary.



If I have mistaken my instructions the error will thus be rectified. If I have understood them correctly an unconditional acceptance of other terms would be a dereliction of duty on my part.

## BEGINNINGS OF RESPONSIBLE GOVERNMENT REPORTED <sup>1</sup>

May 21, 1856

IN continuance of former despatches on the subject of the establishment of responsible government, I have the honor to acquaint you, that on the 4th instant Mr. Sewell informed me that in consequence of an adverse vote on the preceding day he desired to tender his own resignation and that of his colleagues in office.

2. At his recommendation I then sent for Dr. Campbell, and afterwards for Dr. Featherstone, the former having proposed and carried an amendment adverse to Mr. Sewell's ministry, and the latter as the ostensible leader of another section of the opposition.

3. These gentlemen having declined, or found themselves unable to assume office, Mr. Sewell and his colleagues resumed their seats in the Executive Council.

4. On the 14th instant Mr. Fox proposed a series of resolutions, which were approved by the House of Representatives, and as they are declared to be the base of future legislation, I enclose them as extracted from the "Southern Cross" newspaper.<sup>2</sup> At the conclusion of the debate, Mr. Fox moved a vote of non-confidence, and on

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 222.

<sup>2</sup> The resolutions dealt, as to substance, with local colonial questions solely.

the following day Mr. Sewell and his colleagues again resigned their offices.

5. On Tuesday the 20th I held an Executive Council, at which the resignations of Messrs. Sewell, Whitaker, Bell, and Tancred were accepted, and Messrs. Fox, Hall, Brown, and W. C. Daldy (the latter without office) sworn in as members of the Council.

6. After this the following gentlemen took the oaths for the respective offices set opposite to their names, and I beg to submit these appointments for approval and confirmation:

JOHN HALL, Esq., *Colonial Secretary.*

WILLIAM FOX, Esq., *Attorney General.*

CHARLES BROWN, Esq., *Colonial Treasurer.*

## FINAL ESTABLISHMENT OF RESPONSIBLE GOVERNMENT IN NEW ZEALAND REPORTED <sup>1</sup>

May 23, 1856

IN reference to Lord John Russell's despatch, No. 1, of May 11, 1855, in which he states (paragraph 5), "As soon as Her Majesty's Government receive intelligence of the establishment of responsible government in New Zealand, I will cause fresh instructions to be issued omitting the senior military officer from the Executive Council. Until that time the instructions may as well remain unaltered," I have the honor to inform you that responsible government has been fully established in New Zealand.

2. I venture, however, to request that the decision above

<sup>1</sup> Commons Papers, 1860, vol. 46, No. 2719, p. 224.

alluded to may be carefully considered. It appears to me that the presence of the officer commanding the troops is attended with many advantages. An opinion given by a person acquainted with the affairs of the Colony, and responsible in that respect, is often different from that which would be given by a military officer viewing the subject in a professional light only. Of this I have already had experience.

3. On the other hand, by the relations established between myself and my responsible advisers, it is understood that questions of ministerial policy are not to be brought before the Executive Council, which will only be convened for purposes required by law to be approved in Council, or when it may be thought necessary to hold consultations unconnected with party views.

4. It should also be remembered that the senior military officer is appointed to succeed the Governor in the event of his death or removal.

## ABOLITION OF PROVINCES

[39 Victoria, No. XXI (N. Z.)]

1875

*An Act to provide for the abolition of provinces.*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. The short title of this Act shall be "The Abolition of Provinces Act, 1875."

2. In the construction of this Act the following terms and expressions shall have the meanings hereby respectively attached to them:

“Governing body” means and includes the Council of any city or borough constituted under “The Municipal Corporations Act, 1867,” and the Council, Board of Commissioners, Board of Wardens, Trustees, or the persons or body having the control or government of the local affairs of any city town or place under any of the Acts or Ordinances specified in the fourth column of the first schedule to “The Municipal Corporations Act, 1867,” or the person or body having the control or government of the local affairs of any other city town or place, and also the Board, Trustees, Wardens, or the persons or body, as the case may be, having the management, control, or care of roads or highways in any road district.

“Road district” means and includes any road district, highway district, or other district howsoever denominated, heretofore constituted under any Act of the General Assembly or under any provincial enactment in force at the date of the abolition of the Province within which the district was comprised, or that may hereafter be constituted under any law for the time being in force providing for the construction, control, maintenance, or repair of highways.

“Municipality” means and includes a city or borough constituted under “The Municipal Corporations Act, 1867,” and any city, town, or place under the control or government of any Council, Board of Commissioners, Board of Wardens, Trustees, or other persons or body under any of the Acts or Ordinances specified



in the fourth column of the first schedule to "The Municipal Corporations Act, 1867," or the person or body having the control or government of the local affairs of any other city town or place.

"Public works" mean and include branch railways, tramways, main roads, public bridges and ferries on main roads, docks, quays, piers, wharves, and harbor works, reclamation of land from the sea, protection of land from encroachment or destruction by sea or river.

3. The second section of the Constitution Act is hereby repealed, and the Provinces of Auckland, Hawke's Bay, Taranaki, Wellington, Nelson, Marlborough, Westland, Canterbury, and Otago shall be and are hereby abolished.

4. The portion of the Colony included within any province abolished hereunder shall, on and after the date of the abolition thereof, be called a Provincial District, and bear the same name as the abolished Province which it comprised.

5. Within the district included within any Province abolished hereunder, all laws in force therein at the date of the abolition of such Province shall, except so far as the same are expressly or impliedly altered or repealed by this Act, and so far as the same are applicable, continue in force in such district until altered or repealed by the General Assembly.

6. Immediately upon the abolition hereunder of any Province, and without any proclamation or other act by the Governor or otherwise, the person who was then in office as Superintendent of such Province shall cease to hold such office, and the Provincial Council of such Province shall be dissolved, and there shall not thereafter be any election of

a Superintendent or a member of a Provincial Council for the district theretofore included within such abolished Province; and all laws relating to the election of Superintendents of Provinces and members of Provincial Councils of Provinces, and to legislation by Provincial Councils, shall, immediately upon the abolition hereunder of any Province, cease to have any operation or effect within and as regards the district theretofore included within such abolished Province.

7. All powers duties and functions which, immediately before the date of the abolition hereunder of any Province, were, under or by virtue of any law not expressly or impliedly repealed or altered hereby, vested in or to be exercised or performed by the Superintendent of such abolished Province, either alone or with the advice and consent of or on the recommendation of the Executive or Provincial Council of such province, or which, by virtue of "The Public Reserves Act, 1854," or any Act amending the same, or by virtue of any Waste Lands Act or any regulations made thereunder, or otherwise howsoever, would but for this Act have been exercised only under an ordinance of such abolished Province, shall, on the day of the date of the abolition of such Province, and for the purposes of the district included within such abolished Province, vest in and be exercised and performed by the Governor.

Such powers duties and functions may be exercised or performed by the Governor as regards the district with respect to which they may be exercised or performed whether the Governor is for the time being within such district or not.

8. All powers duties and functions which, immediately before the date of the abolition hereunder of any Province are, under or by virtue of any law not expressly or im-

pliedly repealed, hereby, vested in or to be exercised or performed by the Provincial Treasurer, Provincial Secretary, or other public officer of such abolished Province, shall, from and after the date of the abolition of such Province, and for the purpose of the district included within such abolished Province, vest in and be exercised or performed by any person or persons from time to time appointed for the purpose by the Governor.

9. Except as hereinafter provided, all lands tenements goods chattels moneys and things in action, and all real and personal property whatever, and all rights and interests therein, which immediately before the date of the abolition hereunder of any Province were vested in or belonged to the Superintendent of any Province as such Superintendent, shall, on the date of the abolition thereof, vest in Her Majesty the Queen for the same purposes and objects, and subject to the same powers and conditions, as those for and subject to which they are now held by the Superintendent.

All revenues and moneys, and all securities for such moneys, which on the date of the abolition of any Province may be the property of or invested on behalf of such Province, shall on the date of the abolition thereof vest in Her Majesty the Queen.

Provided that if at the date of the abolition of any Province any moneys or revenues of such Province shall have been specifically set apart, and shall be available for public works or other purposes within such Province, or any district thereof, such moneys or revenues shall be applicable to such purposes accordingly.

10. Immediately on the coming into operation of this Act, all real and personal property whatsoever which is vested in or under the control of the Superintendent of any

Province comprised within any provincial district, for grammar and common school purposes, or as sites for schools, or for the endowment of primary education, and all lands which shall have been or may hereafter be reserved and set apart for any such purposes or objects as aforesaid, under any Act of the General Assembly, shall be vested in the Board of Education constituted under any Act or Ordinance, or if there shall be more than one such Board in a provincial district, then in such Board or Boards as the Governor in Council shall direct or appoint.

All the functions and duties relating to such property which, immediately before the date of the coming into operation of this Act were, under or by virtue of any Act or Ordinance in force in any Province, vested in the Superintendent of such Province, either alone or acting with the advice of his Executive Council, shall, on the coming into operation of this Act, be performed by the Chairman of the Board of Education, in whom such property shall be vested as aforesaid.

All lands hereby vested in a Board of Education shall, subject to any leases or contracts theretofore lawfully entered into relating to the same, be held in trust for the like purposes and with the same powers that the same were held by such Superintendent as aforesaid prior to the coming into operation of this Act.

11. All contracts existing immediately before the date of the abolition hereunder of any Province, and all actions suits proceedings and things begun and not completed at the date of the abolition hereunder of any Province, of by or against the Superintendent of such abolished Province as such, shall belong and attach to and be enforced by and against Her Majesty the Queen.



12. In every Act of the General Assembly, except such as relate to the election of Superintendents and Provincial Councils, and to legislation by such Councils and the appointment of Deputy Superintendents, and to audit of provincial accounts, and matters of a like kind, and in every Act or Ordinance of the legislature of an abolished Province, the words, terms, and expressions following shall, with regard to any provincial district, include the meaning hereafter attached to them; that is to say,

- (1) The word "Province" shall include "provincial district," and when the name of any abolished Province is used, or any Province is otherwise expressly referred to, the enactment shall be deemed to mean and apply to the provincial district of that name.
- (2) The word "Superintendent" shall, with respect to such provincial district, mean the Governor, or any person or persons whom the Governor may from time to time appoint to perform those duties, and exercise those powers which might, if such duties and powers had to be performed within a Province, be exercised or performed by Superintendents thereof.
- (3) The expression "Provincial *Gazette*," or "Provincial Government *Gazette*," or other similar expressions, shall be deemed to mean "*The New Zealand Gazette*," or such newspaper as from time to time may be appointed by the Governor for the purpose of inserting therein notifications of any kind relating to the Government of the Colony, or the administration of government within any provincial district.

13. If after the date of the abolition hereunder of any Province the services of any officer in the employment of the Government of the Colony, or of the Provincial Government of the abolished Province, are dispensed with in consequence of the abolition of such Province, he shall be paid out of the ordinary revenue of the Colony such sum as he shall be entitled to under the terms of any engagement with the Province entered into previous to the fifteenth September, one thousand eight hundred and seventy-five, and in default of any such agreement, then for each year of service one month's salary, according to the rate payable to him at the time of such abolition.

. . . . .

23. Nothing in this Act contained with respect to the appropriation or division of the land fund shall be deemed to alter or affect the liability of the Colony to the public creditor, or to affect any permanent appropriation of or charges upon such revenue under any law in force in the Colony: Provided always that, on and after this Act coming into operation, the endowment of one-fourth of the land revenue of the Timaru and Gladstone Board of Works shall cease.

24. Whenever under any Act of the General Assembly any shire shall be constituted, such shire shall for the purposes of this Act be deemed to stand in the place of the several road districts or parts of road districts of which such shire shall be composed, and after the constitution of any shire all moneys which under this Act would have been payable to the Road Boards of which such shire is composed shall be paid and payable to the governing body of the shire.

25. (1) Section seventeen of the Constitution Act is hereby repealed.

(2) It shall not be lawful for the Superintendent of any Province to convene the Provincial Council thereof, or for any Provincial Council to meet in session, before the day next after the last day of the first session of the next or sixth Parliament of New Zealand.

26. No contract or engagement shall be made or entered into after the thirtieth day of September, one thousand eight hundred and seventy-five, by the Superintendent of any province as such Superintendent, for the construction of any railway tramway or harbor works, without the consent of the Governor in Council.

No other contract or engagement shall be made or entered into after the day last aforesaid by the Superintendent of any province as aforesaid, whereby any public money amounting in the whole to one thousand pounds or upwards, shall or may become payable, unless the money required to meet the expenditure to be thereby incurred has been duly appropriated by the Legislature of the province, and the Governor shall have been satisfied previously to the making or entering into such contract or engagement that the provincial revenue receivable before the thirtieth day of September, one thousand eight hundred and seventy-six, will be sufficient to meet such expenditure.

27. Until the day next after the last day of the first session of the next or sixth Parliament of New Zealand, all powers duties and functions which, immediately before the passing of this Act, were under or by virtue of any law vested in or to be exercised or performed by the Superintendent of any province on the recommendation or resolution of the Provincial Council of such province, (under any law or ordinance for the time being in force,)

shall be exercised by the Superintendent, with the consent of the Governor in Council.

28. Sections twenty-five, twenty-six, and twenty-seven and this section of this Act shall come into operation on the day on which it is assented to by the Governor in the name and on behalf of Her Majesty, and the remaining sections of this Act shall come into operation on the day next after the last day of the first session of the next or sixth Parliament of New Zealand.



PART III  
CANADA

## HISTORICAL RÉSUMÉ

In 1867 there were three Provinces in continental Canada enjoying responsible government established in somewhat the same manner as that which had been observed in the cases of Newfoundland and New Zealand. These Provinces were united in a federal government by British Imperial Statute, provision being made for an increase in the membership of the federation. The Act of 1867 has been amended by Imperial Statutes from time to time since its passage. The most important and significant of these Acts were passed in 1871, 1875 and 1886.

# THE BRITISH NORTH AMERICA ACT

[30 Victoria, cap. 3]

1867

*An Act for the union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for purposes connected therewith.*

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom:

And whereas such a union would conduce to the welfare of the provinces and promote the interests of the British Empire:

And whereas on the establishment of the union by authority of Parliament it is expedient, not only that the constitution of the legislative authority in the Dominion be provided for, but also that the nature of the executive government therein be declared:

And whereas it is expedient that provision be made for the eventual admission into the union of other parts of British North America:

Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

## I.—PRELIMINARY

1. This Act may be cited as the British North America Act, 1867.

2. The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, kings and queens of the United Kingdom of Great Britain and Ireland.

## II.—UNION

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honorable Privy Council, to declare by proclamation that, on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be one Dominion under the name of Canada; and on and after that day those three Provinces shall form and be one Dominion under that name accordingly.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the union, that is to say, on and after the day appointed for the union taking effect in the Queen's proclamation; and in the same provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.<sup>1</sup>

6. The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respec-

<sup>1</sup> The following additions have been made to the membership of the confederation: Manitoba, 1870; British Columbia, 1871; Prince Edward Island, 1873; Alberta and Saskatchewan, 1905.



tively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

8. In the general census of the population of Canada which is hereby required to be taken in the year one thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

### III.—EXECUTIVE POWER

9. The executive government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

10. The provisions of this Act referring to the Governor General extend and apply to the Governor General for the time being of Canada, or other the chief executive officer or administrator for the time being carrying on the government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

11. There shall be a council to aid and advise in the government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor General.

12. All powers, authorities and functions which under

any act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the advice, or with the advice and consent, of the respective executive councils thereof, or in conjunction with those councils, or with any number of members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the advice, or with the advice and consent, of or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

13. The provisions of this Act referring to the Governor General in council shall be construed as referring to the Governor General acting by and with the advice of the Queen's Privy Council for Canada.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor General such of the powers, authorities and functions of the Governor General as the Governor General deems it necessary or expedient to assign.

to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a deputy or deputies shall not affect the exercise by the Governor General himself of any power, authority, or function.

15. The command-in-chief of the land and naval militia, and of all naval and military forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

16. Until the Queen otherwise directs, the seat of government of Canada shall be Ottawa.

#### IV.—LEGISLATIVE POWER

17. There shall be one Parliament for Canada, consisting of the Queen, an upper house styled the Senate, and the House of Commons.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.<sup>1</sup>

19. The Parliament of Canada shall be called together not later than six months after the union.

20. There shall be a session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and in its first sitting in the next session.

<sup>1</sup> Repealed and replaced by Act of 1875, as given below, pp. 195-196.

## THE SENATE

21. The Senate shall, subject to the provisions of this Act, consist of seventy-two members, who shall be styled Senators.<sup>1</sup>

22. In relation to the constitution of the Senate, Canada shall be deemed to consist of three divisions:

1. Ontario;

2. Quebec;

3. The Maritime provinces, Nova Scotia and New Brunswick;

which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four Senators; Quebec by twenty-four Senators; and the Maritime provinces by twenty-four Senators, twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec, each of the twenty-four Senators representing that province shall be appointed for one of the twenty-four electoral divisions of Lower Canada specified in schedule A to chapter one of the consolidated statutes of Canada.

23. The qualifications of a Senator shall be as follows:

1) He shall be of the full age of thirty years:

2) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of one of the provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick

<sup>1</sup> By the British North America Act of 1871, the Canadian Parliament was empowered to make provision for the representation therein of provinces subsequently admitted; see the Act as given below, pp. 193-195.



before the union, or of the Parliament of Canada after the union:

3) He shall be legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common socage, or seized or possessed for his own use and benefit of lands or tenements held in *franc-alieu* or in rotture, within the Province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages, and encumbrances due or payable out of, or charged on or affecting the same:

4) His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities:

5) He shall be resident in the province for which he is appointed:

6) In the case of Quebec, he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division.

24. The Governor General shall from time to time, in the Queen's name, by instrument under the great seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a Senator.

25. Such persons shall be first summoned to the Senate as the Queen by warrant under Her Majesty's royal sign manual thinks fit to approve, and their names shall be inserted in the Queen's proclamation of union.

26. If at any time, on the recommendation of the Governor General, the Queen thinks fit to direct that three or six members be added to the Senate, the Governor General may by summons to three or six qualified persons (as the case may be), representing equally the three divisions of Canada, add to the Senate accordingly.

27. In case of such addition being at any time made, the Governor General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators, and no more.

28. The number of Senators shall not at any time exceed seventy-eight.

29. A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

30. A Senator may, by writing under his hand, addressed to the Governor General, resign his place in the Senate, and thereupon the same shall be vacant.

31. The place of a Senator shall become vacant in any of the following cases:

1) If for two consecutive sessions of the Parliament he fails to give his attendance in the Senate:

2) If he takes an oath or makes a declaration or acknowledgement of allegiance, obedience or adherence to a foreign Power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a foreign Power:

3) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter:

4) If he is attainted of treason, or convicted of felony or of any infamous crime:

5) If he ceases to be qualified in respect of property or of residence; provided that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of the government of Canada while holding an office under that Government requiring his presence there.

32. When a vacancy happens in the Senate, by resignation, death, or otherwise, the Governor General shall, by summons to a fit and qualified person fill the vacancy.

33. If any question arises respecting the qualification of a Senator or a vacancy in the Senate, the same shall be heard and determined by the Senate.

34. The Governor General may from time to time, by instrument under the great seal of Canada, appoint a Senator to be speaker of the Senate, and may remove him and appoint another in his stead.

35. Until the Parliament of Canada otherwise provides, the presence of at least fifteen Senators, including the speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

36. Questions arising in the Senate shall be decided by a majority of voices, and the speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

#### THE HOUSE OF COMMONS

37. The House of Commons shall, subject to the provisions of this Act, consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.

38. The Governor General shall from time to time, in the Queen's name, by instrument under the great seal of Canada, summon and call together the House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a member of the House of Commons.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall,

for the purposes of the election of members to serve in the House of Commons, be divided into electoral districts as follows:

1.—*Ontario*

Ontario shall be divided into the counties, ridings of counties, cities, parts of cities, and towns enumerated in the first schedule to this Act, each whereof shall be an electoral district, each such district as numbered in that schedule being entitled to return one member.

2.—*Quebec*

Quebec shall be divided into sixty-five electoral districts, composed of the sixty-five electoral divisions into which Lower Canada is, at the passing of this Act, divided under chapter two of the consolidated statutes of Canada, chapter seventy-five of the consolidated statutes for Lower Canada, and the Act of the province of Canada of the twenty-third year of the Queen, chapter one, or any other Act amending the same in force at the union, so that each such electoral division shall be for the purposes of this Act an electoral district entitled to return one member.

3.—*Nova Scotia*

Each of the eighteen counties of Nova Scotia shall be an electoral district. The county of Halifax shall be entitled to return two members, and each of the other counties one member.

4.—*New Brunswick*

Each of the fourteen counties into which New Brunswick is divided, including the city and county of St. John, shall be an electoral district. The city of St. John shall also be



a separate electoral district. Each of those fifteen electoral districts shall be entitled to return one member.

41. Until the Parliament of Canada otherwise provides, all laws in force in the several provinces at the union relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the house of assembly or legislative assembly in the several provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections, and proceedings incident thereto, the vacating of seats of members, and the execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the House of Commons for the same several provinces.

Provided that, until the Parliament of Canada otherwise provides, at any election for a member of the House of Commons for the district of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or upwards, being a house-holder, shall have a vote.

42. For the first election of members to serve in the House of Commons the Governor General shall cause writs to be issued by such person, in such form and addressed to such returning officers as he thinks fit.

The persons issuing writs under this section shall have the like powers as are possessed at the union by the officers charged with the issuing of writs for the election of members to serve in the respective house of assembly or legislative assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the returning officers to whom writs are

directed under this section shall have the like powers as are possessed at the union by the officers charged with the returning of writs for the election of members to serve in the same respective house of assembly or legislative assembly.

43. In case of vacancy in the representation in the House of Commons of any electoral district happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing section of this Act shall extend and apply to the issuing and returning of a writ in respect of such vacant district.

44. The House of Commons on its first assembling after a general election shall proceed with all practicable speed to elect one of its members to be speaker.

45. In case of a vacancy happening in the office of speaker by death, resignation, or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its members to be speaker.

46. The speaker shall preside at all meetings of the House of Commons.

47. Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the speaker from the chair of the House of Commons for a period of forty-eight consecutive hours, the house may elect another of its members to act as speaker, and the member so elected shall during the continuance of such absence of the speaker have and execute all the powers, privileges, and duties of speaker.

48. The presence of at least twenty members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers, and for that purpose the speaker shall be reckoned as a member.

49. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the

speaker, and when the voices are equal, but not otherwise, the speaker shall have a vote.

50. Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be readjusted by such authority, in such manner, and from such time, as the Parliament of Canada from time to time provides, subject and according to the following rules:

1) Quebec shall have the fixed number of sixty-five members:

2) There shall be assigned to each of the other Provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained):

3) In the computation of the number of members for a Province a fractional part not exceeding one-half of the whole number requisite for entitling the Province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number:

4) On any such readjustment the number of members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the Province is ascertained at the then latest census to be diminished by one-twentieth part or upwards:

5) Such readjustment shall not take effect until the termination of the then existing Parliament.

52. The number of members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate representation of the Provinces prescribed by this Act is not thereby disturbed.

#### MONEY VOTES: ROYAL ASSENT

53. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor General in the session in which such vote, resolution, address, or bill is proposed.

55. Where a bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure.

56. Where the Governor General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's principal Secretaries of State, and if the Queen in Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with



a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor General, by speech or message to each of the Houses of the Parliament or by proclamation, shall annul the Act from and after the day of such signification.

57. A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor General for the Queen's assent, the Governor General signifies, by speech or message to each of the Houses of the Parliament or by proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message, or proclamation shall be made in the journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of Canada.

## V.—PROVINCIAL CONSTITUTIONS

### EXECUTIVE POWER

58. For each Province there shall be an officer, styled the Lieutenant Governor, appointed by the Governor General in council by instrument under the great seal of Canada.

59. A Lieutenant Governor shall hold office during the pleasure of the Governor General; but any Lieutenant Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons, within one week thereafter if the Parliament

is then sitting, and if not then within one week after the commencement of the next session of the Parliament.

60. The salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada.

61. Every Lieutenant Governor shall, before assuming the duties of his office, make and subscribe before the Governor General or some person authorized by him oaths of allegiance and office similar to those taken by the Governor General.

62. The provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the time being of each Province, or other the chief executive officer or administrator for the time being carrying on the government of the Province, by whatever title he is designated.

63. The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant Governor from time to time thinks fit, and in the first instance of the following officers, namely,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in Quebec the Speaker of the Legislative Council and the Solicitor General.

64. The constitution of the executive authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act.

65. All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the union

vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the advice or with the advice and consent of the respective executive councils thereof, or in conjunction with those councils, or with any number of members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the union in relation to the government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the advice or with the advice and consent of or in conjunction with the respective executive councils or any members thereof, or by the Lieutenant Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective legislatures of Ontario and Quebec.

66. The provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the advice of the executive council thereof.

67. The Governor General in Council may from time to time appoint an administrator to execute the office and functions of Lieutenant Governor during his absence, illness, or other inability.

68. Unless and until the executive government of any Province otherwise directs with respect to that Province, the seats of government of the provinces shall be as follows, namely,—of Ontario, the city of Toronto; of Quebec, the city of Quebec; of Nova Scotia, the city of Halifax; and of New Brunswick, the city of Fredericton.

## LEGISLATIVE POWER

1.—*Ontario*

69. There shall be a legislature for Ontario consisting of the Lieutenant Governor and of one house, styled the Legislative Assembly of Ontario.

70. The Legislative Assembly of Ontario shall be composed of eighty-two members, to be elected to represent the eighty-two electoral districts set forth in the first schedule to this Act.

2.—*Quebec*

71. There shall be a legislature for Quebec consisting of the Lieutenant Governor and two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

72. The Legislative Council of Quebec shall be composed of twenty-four members, to be appointed by the Lieutenant Governor in the Queen's name by instrument under the great seal of Quebec, one being appointed to represent each of the twenty-four electoral divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the legislature of Quebec otherwise provides under the provisions of this Act.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

75. When a vacancy happens in the Legislative Council of Quebec by resignation, death, or otherwise, the Lieutenant Governor, in the Queen's name, by instrument under



the great seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

76. If any question arises respecting the qualifications of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

77. The Lieutenant Governor may from time to time, by instrument under the great seal of Quebec, appoint a member of the Legislative Council of Quebec to be speaker thereof, and may remove him and appoint another in his stead.

78. Until the legislature of Quebec otherwise provides, the presence of at least ten members of the Legislative Council, including the speaker, shall be necessary to constitute a meeting for the exercise of its powers.

79. Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

80. The legislative assembly of Quebec shall be composed of sixty-five members, to be elected to represent the sixty-five electoral divisions or districts of Lower Canada in this Act referred to, subject to alteration thereof by the legislature of Quebec: provided that it shall not be lawful to present to the Lieutenant Governor of Quebec for assent any bill for altering the limits of any of the electoral divisions or districts mentioned in the second schedule to this Act, unless the second and third readings of such bill have been passed in the legislative assembly with the concurrence of the majority of the members representing all those electoral divisions or districts, and the assent shall not be given to such bill unless an address has been

presented by the legislative assembly to the Lieutenant Governor stating that it has been so passed.

### 3.—*Ontario and Quebec*

81. The legislatures of Ontario and Quebec, respectively, shall be called together not later than six months after the union.

82. The Lieutenant Governor of Ontario and of Quebec shall, from time to time, in the queen's name, by instrument under the great seal of the Province, summon and call together the legislative assembly of the Province.

83. Until the legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any office, commission or employment, permanent or temporary, at the nomination of the Lieutenant Governor, to which an annual salary, or any fee, allowance, emolument, or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a member of the legislative assembly of the respective Province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the executive council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the house for which he is elected, provided he is elected while holding such office.

84. Until the legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the union are in force in those Provinces respectively, relative to the follow-

ing matters, or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members, and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the respective legislative assemblies of Ontario and Quebec.

Provided that until the legislature of Ontario otherwise provides, at any election for a member of the legislative assembly of Ontario for the district of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject aged twenty-one years or upwards, being a householder, shall have a vote.

85. Every legislative assembly of Ontario and every legislative assembly of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject, nevertheless, to either the legislative assembly of Ontario or the legislative assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province); and no longer.

86. There shall be a session of the legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the legislature in each province in one session and its first sitting in the next session.

87. The following provisions of this Act respecting the House of Commons of Canada, shall extend and apply to the legislative assemblies of Ontario and Quebec, that is to

say,—the provisions relating to the election of a speaker originally and on vacancies, the duties of the speaker, the absence of the speaker, the quorum, and the mode of voting, as if those provisions were here reenacted and made applicable in terms to each such legislative assembly.

#### 4.—*Nova Scotia and New Brunswick*

88. The constitution of the legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act; and the house of assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

#### 5.—*Ontario, Quebec, and Nova Scotia*

89. Each of the Lieutenant Governors of Ontario, Quebec, and Nova Scotia shall cause writs to be issued for the first election of members of the legislative assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such returning officer as the Governor General directs, and so that the first election of member of assembly for any electoral district or any subdivision thereof shall be held at the same time and at the same places as the election for a member to serve in the House of Commons of Canada for that electoral district.

#### 6.—*The Four Provinces*

90. The following provisions of this Act respecting the Parliament of Canada, namely,—the provisions relating to



appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of acts and the signification of pleasure on bills reserved,—shall extend and apply to the legislatures of the several Provinces as if those provisions were here reenacted and made applicable in terms to the respective Provinces and the legislatures thereof, with the substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of one year for two years, and of the Province of Canada.

## VI.—DISTRIBUTION OF LEGISLATIVE POWERS

### POWERS OF THE PARLIAMENT

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say,—

- 1) The public debt and property.
- 2) The regulation of trade and commerce.
- 3) The raising of money by any mode or system of taxation.
- 4) The borrowing of money on the public credit.
- 5) Postal service.
- 6) The census and statistics.

- 7) Militia, military and naval service, and defence.
  - 8) The fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada.
  - 9) Beacons, buoys, lighthouses, and Sable Island.
  - 10) Navigation and shipping.
  - 11) Quarantine and the establishment and maintenance of marine hospitals.
  - 12) Sea coast and inland fisheries.
  - 13) Ferries between a province and any British or foreign country or between two provinces.
  - 14) Currency and coinage.
  - 15) Banking, incorporation of banks, and the issue of paper money.
  - 16) Savings banks.
  - 17) Weights and measures.
  - 18) Bills of exchange and promissory notes.
  - 19) Interest.
  - 20) Legal tender.
  - 21) Bankruptcy and insolvency.
  - 22) Patents of invention and discovery.
  - 23) Copyrights.
  - 24) Indians, and lands reserved for the Indians.
  - 25) Naturalization and aliens.
  - 26) Marriage and divorce.
  - 27) The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.
  - 28) The establishment, maintenance, and management of penitentiaries.
  - 29) Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces.
- And any matter coming within any of the classes of sub-

jects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces.

#### EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

92. In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

1) The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant Governor.

2) Direct taxation within the Province in order to the raising of a revenue for provincial purposes.

3) The borrowing of money on the sole credit of the Province.

4) The establishment and tenure of provincial offices and the appointment and payment of provincial officers.

5) The management and sale of the public lands belonging to the Province and of the timber and wood thereon.

6) The establishment, maintenance, and management of public and reformatory prisons in and for the Province.

7) The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals.

8) Municipal institutions in the Province.

9) Shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local, or municipal purposes.

10) Local works and undertakings, other than such as are of the following classes:—

a) Lines of steam or other ships, railways, canals, tele-

*See Hodge v  
Mun*

graphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;

b) Lines of steamships between the Province and any British or foreign country;

c) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.

11) The incorporation of companies with provincial objects.

12) The solemnization of marriage in the Province.

13) Property and civil rights in the Province.

14) The administration of justice in the Province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

15) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

16) Generally all matters of a merely local or private nature in the Province.

*Hodge v. Ash  
Green.*

#### EDUCATION

93. In and for each Province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational



schools which any class of persons have by law in the Province at the union:

2) All the powers, privileges, and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec:

3) Where in any Province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the Province, an appeal shall lie to the Governor General in council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education:

4) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

UNIFORMITY OF LAWS IN ONTARIO, NOVA SCOTIA, AND  
NEW BRUNSWICK

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil

rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three Provinces, and from and after the passing of any Act in that behalf, the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the legislature thereof.

#### AGRICULTURE AND IMMIGRATION

95. In each Province the legislature may make laws in relation to agriculture in the Province, and to immigration into the Province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the Provinces, and to immigration into all or any of the Provinces; and any law of the legislature of a Province relative to agriculture or to immigration, shall have effect in and for the Province as long and as far only as it is not repugnant to any act of the Parliament of Canada.

#### VII.—JUDICATURE

96. The Governor General shall appoint the judges of the superior, district, and county courts in each Province, except those of the courts of probate in Nova Scotia and New Brunswick.

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and the procedure of the courts in those provinces, are made uniform,

the judges of the courts of those Provinces appointed by the Governor General shall be selected from the respective bars of those Provinces.

98. The judges of the courts of Quebec shall be selected from the bar of that Province.

99. The judges of the superior courts shall hold office during good behavior, but shall be removable by the Governor General on address of the Senate and House of Commons.

100. The salaries, allowances, and pensions of the judges of the superior, district, and county courts (except the courts of probate in Nova Scotia and New Brunswick), and of the admiralty courts in cases where the judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada.

101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance, and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

#### VIII.—REVENUES; DEBTS; ASSETS; TAXATION

102. All duties and revenues over which the respective legislatures of Canada, Nova Scotia, and New Brunswick before and at the union had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective legislatures of the Provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one consolidated revenue fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

103. The consolidated revenue fund of Canada shall be permanently charged with the costs, charges, and expenses incident to the collection, management and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor General in council until the Parliament otherwise provides.

104. The annual interest of the public debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the union shall form the second charge on the consolidated revenue fund of Canada.

105. Unless altered by the Parliament of Canada, the salary of the Governor General shall be ten thousand pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the consolidated revenue fund of Canada, and the same shall form the third charge thereon.

106. Subject to the several payments by this Act charged on the consolidated revenue fund of Canada, the same shall be appropriated by the Parliament of Canada, for the public service.

107. All stocks, cash, bankers' balances, and securities for money belonging to each Province at the time of the union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the Provinces at the union.

108. The public works and property of each Province, enumerated in the third schedule to this Act, shall be the property of Canada.

109. All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the union, and all sums then due or payable



for such lands, mines, minerals, or royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same.

110. All assets connected with such portions of the public debt of each Province as are assumed by that Province shall belong to that Province.

111. Canada shall be liable for the debts and liabilities of each Province existing at the union.

112. Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeds at the union sixty-two million five hundred thousand dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

113. The assets enumerated in the fourth schedule to this Act belonging at the union to the Province of Canada shall be the property of Ontario and Quebec conjointly.

114. Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the union eight million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

115. New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the union seven million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

116. In case the public debts of Nova Scotia and New Brunswick do not at the union amount to eight million and seven million dollars respectively, they shall respectively receive by half-yearly payments in advance from the Government of Canada, interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts.

117. The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country.

118. The following sums shall be paid yearly by Canada to the several provinces for the support of their governments and legislatures:

Ontario .....	\$80,000
Quebec .....	70,000
Nova Scotia .....	60,000
New Brunswick .....	50,000
	<hr/>
	\$260,000

and an annual grant in aid of each Province shall be made, equal to eighty cents per head of the population as ascertained by the census of one thousand eight hundred and sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census until the population of each of those two Provinces amounts to four hundred thousand souls, at which rate such grant shall thereafter remain. Such grants shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such grants, as against any Province, all sums chargeable as interest on the public debt of that Province in excess of the several amounts stipulated in this Act.

119. New Brunswick shall receive by half-yearly payments in advance from Canada for a period of ten years from the union an additional allowance of sixty-three thousand dollars per annum; but as long as the public debt of that Province remains under seven million dollars, a

deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of sixty-three thousand dollars.

120. All payments to be made under this Act, or in discharge of liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the Governor General in council.

121. All articles of the growth, produce, or manufacture of any one of the Provinces shall, from and after the union, be admitted free into each of the other Provinces.

122. The customs and excise laws of each Province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.

123. Where customs duties are, at the union, leviable on any goods, wares, or merchandises in any two provinces, those goods, wares, and merchandises may, from and after the union, be imported from one of those Provinces into the other of them on proof of payment of the customs duty leviable thereon in the province of exportation, and on payment of such further amount (if any) of customs duty as is leviable thereon in the Province of importation.

124. Nothing in this Act shall affect the right of New Brunswick to levy the lumber dues provided in chapter fifteen of title three of the revised statutes of New Brunswick, or in any Act amending that Act before or after the union, and not increasing the amount of such dues; but the lumber of any of the Provinces other than New Brunswick shall not be subject to such dues.

125. No lands or property belonging to Canada or any Province shall be liable to taxation.

126. Such portions of the duties and revenues over which the respective legislatures of Canada, Nova Scotia, and New Brunswick had before the union power of appropriation as are by this Act reserved to the respective governments or legislatures of the provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each Province form one consolidated revenue fund to be appropriated for the public service of the Province.

## IX.—MISCELLANEOUS PROVISIONS

### GENERAL

127. If any person being at the passing of this Act a member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a place in the Senate is offered, does not within thirty days thereafter, by writing under his hand addressed to the Governor General of the Province of Canada, or to the Lieutenant Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any person who, being at the passing of this Act a member of the Legislative Council of Nova Scotia or New Brunswick, accepts a place in the Senate, shall thereby vacate his seat in such Legislative Council.

128. Every member of the Senate or House of Commons of Canada shall before taking his seat therein take and subscribe before the Governor General or some person authorized by him, and every member of a legislative council or legislative assembly of any Province shall before taking his seat therein take and subscribe before the Lieutenant Governor of the Province or some person authorized



by him, the oath of allegiance contained in the fifth schedule to this Act; and every member of the Senate of Canada and every member of the Legislative Council of Quebec shall also, before taking his seat therein, take and subscribe before the Governor General, or some person authorized by him, the declaration of qualification contained in the same schedule.

129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the legislature of the respective Province, according to the authority of the Parliament or of that legislature under this Act.

130. Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces shall be officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the union had not been made.

131. Until the Parliament of Canada otherwise provides, the Governor General in Council may from time to time appoint such officers as the Governor General in Council

deems necessary or proper for the effectual execution of this Act.

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

133. Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective records and journals of those houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

#### ONTARIO AND QUEBEC

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant Governors of Ontario and Quebec may each appoint under the great seal of the Province the following officers, to hold office during pleasure, that is to say,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the case of Quebec, the Solicitor General; and may by order of the Lieutenant Governor in Council from time to time prescribe the duties of those officers, and of the several departments

over which they shall preside or to which they shall belong, and of the officers and clerks thereof, and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

135. Until the legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities, or authorities at the passing of this Act vested in or imposed on the Attorney General, Solicitor General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any law, statute, or ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada, as well as those of the Commissioner of Public Works.

136. Until altered by the Lieutenant Governor in Council, the great seals of Ontario and Quebec respectively shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their union as the Province of Canada.

137. The words "and from thence to the end of the then next ensuing session of the Legislature," or words to the same effect, used in any temporary Act of the Province of Canada not expired before the union, shall be construed

to extend and apply to the next session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same as defined by this Act, or to the next sessions of the legislatures of Ontario and Quebec respectively if the subject matter of the Act is within the powers of the same as defined by this Act.

138. From and after the union the use of the words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any deed, writ, process, pleading, document, matter, or thing, shall not invalidate the same.

139. Any proclamation under the great seal of the Province of Canada issued before the union to take effect at a time which is subsequent to the union, whether relating to that province, or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the union had not been made.

140. Any proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the great seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the union, may be issued by the Lieutenant Governor of Ontario or of Quebec, as its subject matter requires, under the great seal thereof; and from and after the issue of such proclamation the same and the several matters and things therein proclaimed shall be and continue of the like force and effect in Ontario or Quebec as if the union had not been made.

141. The penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the penitentiary of Ontario and of Quebec.

142. The division and adjustment of the debts, credits,



liabilities, properties, and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the government of Ontario, one by the government of Quebec, and one by the government of Canada; and the selection of the arbitrators shall not be made until the Parliament of Canada and the legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec.

143. The Governor General in Council may from time to time order that such and so many of the records, books, and documents of the province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy thereof or extract therefrom, duly certified by the officer having charge of the original thereof, shall be admitted as evidence.

144. The Lieutenant Governor of Quebec may from time to time by proclamation under the great seal of the Province, to take effect from a day to be appointed therein, constitute townships in those parts of the Province of Quebec in which townships are not then already constituted, and fix the metes and bounds thereof.

## X.—INTERCOLONIAL RAILWAY

145. Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, have consequently agreed that provision should be made for its immediate construction by the Government of

Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement, within six months after the union, of a railway connecting the river St. Lawrence with the city of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.

### XI.—ADMISSION OF OTHER COLONIES

146. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honorable Privy Council, on addresses from the Houses of the Parliament of Canada and from the houses of the respective legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia to admit those Colonies or Provinces, or any of them, into the union, and on address from the Houses of the Parliament of Canada to admit Rupert's Land and the Northwestern Territory, or either of them, into the union, on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

147. In case of the admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a representation in the Senate of Canada of four members, and (notwithstanding anything in this Act), in case of the admission of Newfoundland the normal number of Senators shall be seventy-six and their maximum number shall be eighty-two; but Prince Edward Island

when admitted shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those Provinces shall not be increased at any time beyond ten, except under the provisions of this Act, for the appointment of three or six additional Senators under the direction of the Queen.

## THE BRITISH NORTH AMERICA ACT

[34 & 35 Victoria, cap. 28]

1871

*An Act respecting the establishment of Provinces in the Dominion of Canada.*

WHEREAS doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the British North America Act, 1871.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order and good government of such Province, and for its representation in the said Parliament.

3. The Parliament of Canada may from time to time, with the consent of the legislature of any Province of the said Dominion, increase, diminish or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any province affected thereby.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any province.

5. The following Acts passed by the said Parliament of Canada, and entitled respectively: "An Act for the temporary government of Rupert's Land and the Northwestern Territory when united with Canada," and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.

6. Except as provided by the third section of this Act, it



shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the legislative assembly, and to make laws respecting elections in the said Province.

## THE PARLIAMENT OF CANADA ACT

[38 & 39 Victoria, cap. 38]

1875

*An Act to remove certain doubts with respect to the powers of the Parliament of Canada under section eighteen of the British North America Act, 1867.*

WHEREAS by section eighteen of the British North America Act, 1867, it is provided as follows:

“The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act, held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.”

And whereas doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers, or immunities; and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Section eighteen of the British North America Act, 1867, is hereby repealed without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed.

The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act, held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

2. The Act of the Parliament of Canada passed in the thirty-first year of the reign of her present Majesty, chapter twenty-four, entitled "An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament," shall be deemed to be valid, and to have been valid as from the date at which the royal assent was given thereto by the Governor General of the Dominion of Canada.

3. This Act may be cited as the Parliament of Canada Act, 1875.

## THE BRITISH NORTH AMERICA ACT

[49 &amp; 50 Victoria, cap. 35]

1886

*An Act respecting the presentation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province.*

WHEREAS it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada, but is not included in any Province:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Parliament of Canada may, from time to time, make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any Province thereof.

2. Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act shall, if not disallowed by the Queen, be, and shall be deemed to have been valid and effectual from the date at which it received the assent, in Her Majesty's name, of the Governor General of Canada.

It is hereby declared that any Act passed by the Parlia-

ment of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act, or in the British North America Act, 1871, has effect, notwithstanding anything in the British North America Act, 1867, and the number of Senators or the number of members of the House of Commons specified in the last mentioned Act is increased by the number of Senators or of members, as the case may be, provided by any such Act of the Parliament of Canada, for the representation of any Provinces, or territories of Canada.

3. This Act may be cited as the British North America Act, 1886.

This Act and the British North America Act, 1867, and the British North America Act, 1871, shall be construed together, and may be cited together as the British North America Acts, 1867 to 1886.



PART IV  
AUSTRALIA

## HISTORICAL RÉSUMÉ

In 1900 the six Australian Colonies had all received responsible parliamentary governments. By an Imperial statute of that year they were united in a Commonwealth, federal in its nature. This Constitution has been amended by the action of the citizens of the Commonwealth in 1907 and 1910.

# COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

[63 & 64 Victoria, cap. 12]

1900

*An Act to constitute the Commonwealth of Australia.*

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Commonwealth of Australia Constitution Act.

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the Sovereignty of the United Kingdom.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tas-

mania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor General for the Commonwealth.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several Colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such Colonies or Territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called a "State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.



7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any Colony not being a State by the Parliament thereof.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any Colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing Colony for the purposes of that Act.

9. The Constitution of the Commonwealth shall be as follows:

## THE CONSTITUTION

This Constitution is divided as follows:—

<b>CHAPTER</b>	<b>I. The Parliament:</b>
Part	I. General:
Part	II. The Senate:
Part	III. The House of Representatives:
Part	IV. Both Houses of Parliament:
Part	V. Powers of the Parliament:
<b>CHAPTER</b>	<b>II. The Executive Government:</b>
<b>CHAPTER</b>	<b>III. The Judicature:</b>
<b>CHAPTER</b>	<b>IV. Finance and Trade:</b>
<b>CHAPTER</b>	<b>V. The States:</b>
<b>CHAPTER</b>	<b>VI. New States:</b>
<b>CHAPTER</b>	<b>VII. Miscellaneous:</b>
<b>CHAPTER</b>	<b>VIII. Alteration of the Constitution:</b>
<b>THE SCHEDULE.</b>	

### CHAPTER I.—THE PARLIAMENT

#### PART I.—GENERAL

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the

Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

2. A Governor General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to the Constitution, such powers and functions of the Queen as her Majesty may be pleased to assign to him.

3. There shall be payable to the Queen out of the Consolidated Revenue Fund of the Commonwealth, for the salary of the Governor General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

The salary of a Governor General shall not be altered during his continuance in office.

4. The provisions of this Constitution relating to the Governor General extend and apply to the Governor General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

5. The Governor General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

## PART II.—THE SENATE

7. The Senate shall be composed of Senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of Senators chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six Senators for each Original State. The Parliament may make laws increasing or diminishing the number of Senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six Senators.

The Senators shall be chosen for a term of six years, and the names of the Senators chosen for each State shall be certified by the Governor to the Governor General.

8. The qualification of electors of Senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of Senators each elector shall vote only once.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing Senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the Senators for that State.

The Parliament of a State may make laws for determining the times and places of elections of Senators for the State.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of Senators for the State.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

12. The Governor of any State may cause writs to be issued for elections of Senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the Senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the Senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of Senators shall become vacant at the expiration of six years from the beginning of their term of service.



The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a Senator shall be taken to begin on the first day of January following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.<sup>1</sup>

14. Whenever the number of Senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of Senators for the State as it deems necessary to maintain regularity in the rotation.

15. If the place of a Senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of Senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any Senator so chosen or appointed shall be

<sup>1</sup> Section 13 was changed in 1907; see, below, pp. 241-242.

certified by the Governor of the State to the Governor General.

16. The qualifications of a Senator shall be the same as those of a member of the House of Representatives.

17. The Senate shall, before proceeding to the despatch of any other business, choose a Senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a Senator to be the President.

The President shall cease to hold his office if he ceases to be a Senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor General.

18. Before or during any absence of the President, the Senate may choose a Senator to perform his duties in his absence.

19. A Senator may, by writing addressed to the President, or to the Governor General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

20. The place of a Senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth, the Governor General shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the Senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

23. Questions arising in the Senate shall be determined by a majority of votes; and each Senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

PART III.—THE HOUSE OF REPRESENTATIVES

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

- (i) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the Senators:
- (ii) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of

the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:

New South Wales.....	Twenty-three;
Victoria .....	Twenty;
Queensland .....	Eight;
South Australia .....	Six;
Tasmania .....	Five.

Provided that if Western Australia is an Original State, the number shall be as follows:

New South Wales.....	Twenty-six;
Victoria .....	Twenty-three;
Queensland .....	Nine;
South Australia .....	Seven;
Western Australia .....	Five;
Tasmania .....	Five.

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor General.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

30. Until the Parliament otherwise provides, the qualifi-



cation of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

32. The Governor General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor General in Council may issue the writ.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:

- (i) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen:
- (ii) He must be a subject of the Queen, either natural-born

or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth or of a State.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor General.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

37. A member may by writing addressed to the Speaker, or to the Governor General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

## PART IV.—BOTH HOUSES OF THE PARLIAMENT

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

42. Every Senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor General, or some person authorized by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

44. Any person who—

- (i) Is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or
- (ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or
- (iii) Is an undischarged bankrupt or insolvent: or
- (iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- (v) Has any direct or indirect pecuniary interest in any agreement with the public service of the Commonwealth otherwise than as a member and in common with

the other members of an incorporated company consisting of more than twenty-five persons:  
shall be incapable of being chosen or of sitting as a Senator or a member of the House of Representatives.

But sub-section iv does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

45. If a Senator or member of the House of Representatives—

- (i) Becomes subject to any of the disabilities mentioned in the last preceding section: or
- (ii) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or
- (iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a Senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

47. Until the Parliament otherwise provides, any question respecting the qualification of a Senator or of a member of the House of Representatives, or respecting a vacancy in



either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

48. Until the Parliament otherwise provides, each Senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

50. Each House of the Parliament may make rules and orders with respect to:

- (i) The mode in which its powers, privileges, and immunities may be exercised and upheld:
- (ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

#### PART V.—POWERS OF THE PARLIAMENT

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) Trade and commerce with other countries, and among the States:
- (ii) Taxation; but so as not to discriminate between States or parts of States:
- (iii) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:

- (iv) Borrowing money on the public credit of the Commonwealth:
- (v) Postal, telegraphic, telephonic, and other like services:
- (vi) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:
- (vii) Light-houses, light-ships, beacons and buoys:
- (viii) Astronomical and meteorological observations:
- (ix) Quarantine:
- (x) Fisheries in Australian waters beyond territorial limits:
- (xi) Census and statistics:
- (xii) Currency, coinage, and legal tender:
- (xiii) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:
- (xiv) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:
- (xv) Weights and measures:
- (xvi) Bills of exchange and promissory notes:
- (xvii) Bankruptcy and insolvency:
- (xviii) Copyrights, patents of inventions and designs, and trade marks:
- (xix) Naturalization and aliens:
- (xx) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:
- (xxi) Marriage:
- (xxii) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:

- (xxiii) Invalid and old-age pensions:
- (xxiv) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:
- (xxv) The recognition throughout the Commonwealth of the laws, the public acts and records, and the judicial proceedings of the States:
- (xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:
- (xxvii) Immigration and emigration:
- (xxviii) The influx of criminals:
- (xxix) External affairs:
- (xxx) The relations of the Commonwealth with the islands of the Pacific:
- (xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:
- (xxxii) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:
- (xxxiii) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:
- (xxxiv) Railway construction and extension in any State with the consent of that State:
- (xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:
- (xxxvi) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:
- (xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any

State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

(xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:

(xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) The seat of Government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:
- (ii) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth:
- (iii) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or



payment or appropriation of fees for licenses, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor General to the House in which the proposal originated.

57. If the House of Representatives passes any proposed

law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses

of the Parliament, and shall be presented to the Governor General for the Queen's assent.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

The Governor General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59. The Queen may disallow any law within one year from the Governor General's assent, and such disallowance on being made known by the Governor General, by speech or message to each of the Houses of the Parliament, or by proclamation, shall annul the law from the day when the disallowance is so made known.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor General for the Queen's assent the Governor General makes known, by speech or message to each of the Houses of the Parliament, or by proclamation, that it has received the Queen's assent.

## CHAPTER II.—THE EXECUTIVE GOVERNMENT

61. The executive power of the Commonwealth is vested in the Queen, and is exercisable by the Governor General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

62. There shall be a Federal Executive Council to advise the Governor General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor General and sworn as Executive Councillors, and shall hold office during his pleasure.

63. The provisions of this Constitution referring to the Governor General in Council shall be construed as referring to the Governor General acting with the advice of the Federal Executive Council.

64. The Governor General may appoint officers to administer such departments of State of the Commonwealth as the Governor General in Council may establish.

Such officers shall hold office during the pleasure of the Governor General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a Senator or a member of the House of Representatives.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor General directs.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor General in Council, unless the appointment is



delegated by the Governor General in Council or by a law of the Commonwealth to some other authority.

68. The command-in-chief of the naval and military forces of the Commonwealth is vested in the Governor General as the Queen's representative.

69. On a date or dates to be proclaimed by the Governor General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth:

Posts, telegraphs, and telephones:

Naval and military defence:

Light-houses, light-ships, beacons, and buoys:

Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor General, or in the Governor General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

### CHAPTER III.—THE JUDICATURE

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of

a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

72. The Justices of the High Court and of the other courts created by the Parliament—

- (i) Shall be appointed by the Governor General in Council:
- (ii) Shall not be removed except by the Governor General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity:
- (iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

- (i) Of any justice or justices exercising the original jurisdiction of the High Court:
- (ii) Of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council:
- (iii) Of the Inter-State Commission, but as to questions of law only:

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the

Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitations shall be reserved by the Governor General for Her Majesty's pleasure.

75. In all matters—

- (i) Arising under any treaty:
- (ii) Affecting consuls or other representatives of other countries:
- (iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:

- (iv) Between States, or between residents of different States, or between a State and a resident of another State:
- (v) In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

- (i) Arising under this Constitution, or involving its interpretation:
- (ii) Arising under any laws made by the Parliament:
- (iii) Of admiralty and maritime jurisdiction:
- (iv) Relating to the same subject-matter claimed under the laws of different States.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

- (i) Defining the jurisdiction of any federal court other than the High Court:
- (ii) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States:
- (iii) Investing any court of a State with federal jurisdiction.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was com-



mitted, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

#### CHAPTER IV.—FINANCE AND TRADE

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity,

or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State, with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

85. When any department of the public service of a State is transferred to the Commonwealth—

- (i) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor General in Council may declare to be necessary:
- (ii) The Commonwealth may acquire any property of the State, of any kind, used, but not exclusively used in

connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth:

- (iii) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:
- (iv) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

89. Until the imposition of uniform duties of customs:

- (i) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.
- (ii) The Commonwealth shall debit to each State—
  - (a) the expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;
  - (b) the proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.
- (iii) The Commonwealth shall pay to each State month by month the balance (if any) in favor of the State.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States,



whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

- (i) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State.
- (ii) Subject to the last sub-section, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an original State, may during the first five years after the imposition of uniform duties of customs, impose

duties of customs on goods passing into that State, and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government, or an officer of the Commonwealth, were

mentioned whenever the Colony, or the Government, or an officer of the Colony is mentioned.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

103. The members of the Inter-State Commission—

- (i) Shall be appointed by the Governor General in Council:

- (ii) Shall hold office for seven years, but may be removed within that time by the Governor General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:
- (iii) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.<sup>1</sup>

## CHAPTER V.—THE STATES

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at

<sup>1</sup> Section 105 was changed in 1900; see, below, p. 242.



the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

112. After uniform duties of customs have been im-

posed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

118. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public acts and records, and the judicial proceedings of every State.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

#### CHAPTER VI.—NEW STATES

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

#### CHAPTER VII.—MISCELLANEOUS

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

126. The Queen may authorize the Governor General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor General such powers and functions of the Governor General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor General himself of any power or function.

127. In reckoning the numbers of the people of the



Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

#### CHAPTER VIII.—ALTERATION OF THE CONSTITUTION

128. This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two or more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members

of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

## SCHEDULE

### *Oath*

I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. So help me God!

### *Affirmation*

I, A. B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

NOTE.—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.

CONSTITUTION ALTERATION <sup>1</sup>

(SENATE ELECTIONS)

No. 1 of 1907

*An Act to alter the provisions of the Constitution relating to the election of Senators.*

Be it enacted by the King's most excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

1. This Act may be cited as *Constitution Alteration (Senate Elections)* 1906.

2. Section thirteen of the Constitution is altered—

- (a) by omitting the words "the third year," and inserting in lieu thereof the words "three years";
- (b) by omitting the words "the sixth year," and inserting in lieu thereof the words "six years";
- (c) by omitting the words "in the year at the expiration of which," and inserting in lieu thereof "within one year before";
- (d) by omitting the word "January" wherever it occurs, and inserting in lieu thereof the word "July".

3.—(1) The terms of service of the Senators whose places would, but for this Act, become vacant at the expiration of the year one thousand nine hundred and nine are extended until the thirtieth day of June one thousand nine hundred and ten.

(2) The terms of service of the Senators whose places

<sup>1</sup> Knowles, vol. I, p. 28.

would, but for this Act, become vacant at the expiration of the year one thousand nine hundred and twelve are extended until the thirtieth day of June one thousand nine hundred and thirteen.

4. This Act shall not be taken to alter the time of beginning of the term of service of any Senator elected in the year one thousand nine hundred and six.

## CONSTITUTION ALTERATION <sup>1</sup>

(STATE DEBTS)

No. 3 of 1910

*An Act to alter the provisions of the Constitution relating to the public debts of the States.*

Be it enacted by the King's most excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

1. This Act may be cited as *Constitution Alteration (State Debts)* 1909.

2. Section one hundred and five of the Constitution is altered by omitting the words "as existing at the establishment of the Commonwealth."

<sup>1</sup> Knowles, vol. I, p. 29.



PART V  
SOUTH AFRICA

## HISTORICAL RÉSUMÉ

The four autonomous Colonies in South Africa were united in 1909 in a federal union by an Imperial statute. In the case of South Africa the problems facing the supporters of the federal movement were peculiarly perplexing, but the experiences of Canada and Australia could be called upon for assistance and in the end the third federation came into being, having, as its centre, a responsible government similar to those existing in the other Colonies.

# SOUTH AFRICA ACT

[9 Edward VII, cap. 9]

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### *An Act to constitute the Union of South Africa.*

WHEREAS it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland:

And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union:

And whereas it is expedient to make provision for the establishment of Provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration:

And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein:

Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

### I.—PRELIMINARY

1. This Act may be cited as the South Africa Act, 1909.

2. In this Act, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South Africa as constituted under this Act, and the words "Houses of Parliament," "House of Parliament," or "Parliament" shall be taken to mean the Parliament of the Union.

3. The provisions of this Act referring to the King shall extend to His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland.

### II.—THE UNION

4. It shall be lawful for the King, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony, hereinafter called the Colonies, shall be united in a Legislative Union under one Government under the name of the Union of South Africa. On and after the day appointed by such proclamation the Government and Parliament of the Union shall have full power



and authority within the limits of the Colonies, but the King may at any time after the proclamation appoint a Governor General for the Union.

5. The provisions of this Act shall, unless it is otherwise expressed or implied, take effect on and after the day so appointed.

6. The Colonies mentioned in section four shall become original Provinces of the Union under the names of Cape of Good Hope, Natal, Transvaal, and Orange Free State, as the case may be. The original Provinces shall have the same limits as the respective Colonies at the establishment of the Union.

7. Upon any Colony entering the Union, the Colonial Boundaries Act, 1895, and every other Act applying to any of the Colonies as being self-governing Colonies or Colonies with responsible government, shall cease to apply to that Colony, but as from the date when this Act takes effect every such Act of Parliament shall apply to the Union.

### III.—EXECUTIVE GOVERNMENT

8. The Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a Governor General as His representative.

9. The Governor General shall be appointed by the King, and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty may be pleased to assign to him.

10. There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor General an annual sum of ten thousand

pounds. The salary of the Governor General shall not be altered during his continuance in office.

11. The provisions of this Act relating to the Governor General extend and apply to the Governor General for the time being or such person as the King may appoint to administer the government of the Union. The King may authorize the Governor General to appoint any person to be his deputy within the Union during his temporary absence, and in that capacity to exercise for and on behalf of the Governor General during such absence all such powers and authorities vested in the Governor General as the Governor General may assign to him, subject to any limitations expressed or directions given by the King; but the appointment of such deputy shall not affect the exercise by the Governor General himself of any power or function.

12. There shall be an Executive Council to advise the Governor General in the government of the Union, and the members of the council shall be chosen and summoned by the Governor General and sworn as executive councillors, and shall hold office during his pleasure.

13. The provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting with the advice of the Executive Council.

14. The Governor General may appoint officers not exceeding ten in number to administer such departments of State of the Union as the Governor General in Council may establish; such officers shall hold office during the pleasure of the Governor General. They shall be members of the Executive Council and shall be the King's ministers of State for the Union. After the first general election of members of the House of Assembly, as herein-

after provided, no minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament.

15. The appointment and removal of all officers of the public service of the Union shall be vested in the Governor General in Council, unless the appointment is delegated by the Governor General in Council or by this Act or by a law of Parliament to some other authority.

16. All powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in the Governor or in the Governor in Council, or in any authority of the Colony, shall, as far as the same continue in existence and are capable of being exercised after the establishment of the Union, be vested in the Governor General or in the Governor General in Council, or in the authority exercising similar powers under the Union, as the case may be, except such powers and functions as are by this Act or may by a law of Parliament be vested in some other authority.

17. The command-in-chief of the naval and military forces within the Union is vested in the King or in the Governor General as his representative.

18. Save as in section twenty-three excepted, Pretoria shall be the seat of Government of the Union.

#### IV.—PARLIAMENT

19. The legislative power of the Union shall be vested in the Parliament of the Union, herein called Parliament, which shall consist of the King, a Senate, and a House of Assembly.

20. The Governor General may appoint such times for holding the sessions of Parliament as he thinks fit, and

may also from time to time, by proclamation or otherwise, prorogue Parliament, and may in like manner dissolve the Senate and the House of Assembly simultaneously, or the House of Assembly alone: provided that the Senate shall not be dissolved within a period of ten years after the establishment of the Union, and provided further that the dissolution of the Senate shall not affect any Senators nominated by the Governor General in Council.

21. Parliament shall be summoned to meet not later than six months after the establishment of the Union.

22. There shall be a session of Parliament once at least in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next session.

23. Cape Town shall be the seat of the Legislature of the Union.

### *Senate*

24. For ten years after the establishment of the Union the constitution of the Senate shall, in respect of the original Provinces, be as follows:

- (i) Eight Senators shall be nominated by the Governor General in Council, and for each Original Province eight Senators shall be elected in the manner hereinafter provided:
- (ii) The Senators to be nominated by the Governor General in Council shall hold their seats for ten years. One-half of their number shall be selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the colored races in South Africa. If the seat of a Senator so nomi-



nated shall become vacant, the Governor General in Council shall nominate another person to be a Senator, who shall hold his seat for ten years:

- (iii) After the passing of this Act, and before the day appointed for the establishment of the Union, the Governor of each of the Colonies shall summon a special sitting of both Houses of the Legislature, and the two Houses sitting together as one body and presided over by the Speaker of the Legislative Assembly shall elect eight persons to be Senators for the Province. Such Senators shall hold their seats for ten years. If the seat of a Senator so elected shall become vacant, the Provincial Council of the Province for which such Senator has been elected shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat.

25. Parliament may provide for the manner in which the Senate shall be constituted after the expiration of ten years, and unless and until such provision shall have been made—

- (i) The provisions of the last preceding section with regard to nominated Senators shall continue to have effect;
- (ii) Eight Senators for each Province shall be elected by the members of the Provincial Council of such Province together with the members of the House of Assembly elected for such Province. Such Senators shall hold their seats for ten years unless the Senate be sooner dissolved. If the seat of an elected Senator shall become vacant, the members of the Provincial Council of the Province, together with the members of the House of Assembly elected for such Province, shall

choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat. The Governor General in Council shall make regulations for the joint election of Senators prescribed in this section.

26. The qualifications of a Senator shall be as follows:—  
He must—

- (a) be not less than thirty years of age;
- (b) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the Provinces;
- (c) have resided for five years within the limits of the Union as existing at the time when he is elected or nominated, as the case may be;
- (d) be a British subject of European descent;
- (e) in the case of an elected Senator, be the registered owner of immovable property within the Union of the value of not less than five hundred pounds over and above any special mortgages thereon.

For the purposes of this section, residence in, and property situated within, a Colony before its incorporation in the Union shall be treated as residence in and property situated within the Union.

27. The Senate shall, before proceeding to the dispatch of any other business, choose a Senator to be the President of the Senate, and as often as the office of President becomes vacant the Senate shall again choose a Senator to be the President. The President shall cease to hold office if he ceases to be a Senator. He may be removed from office by a vote of the Senate, or he may resign his office by writing under his hand addressed to the Governor General.

28. Prior to or during any absence of the President

the Senate may choose a Senator to perform his duties in his absence.

29. A Senator may, by writing under his hand addressed to the Governor General, resign his seat, which thereupon shall become vacant. The Governor General shall as soon as practicable cause steps to be taken to have the vacancy filled.

30. The presence of at least twelve Senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

31. All questions in the Senate shall be determined by a majority of votes of Senators present other than the President or the presiding Senator, who shall, however, have and exercise a casting vote in the case of an equality of votes.

### *House of Assembly*

32. The House of Assembly shall be composed of members directly chosen by the voters of the Union in electoral divisions delimited as hereinafter provided.

33. The number of members to be elected in the Original Provinces at the first election and until the number is altered in accordance with the provisions of this Act shall be as follows:—

Cape of Good Hope.....	Fifty-one;
Natal .....	Seventeen;
Transvaal .....	Thirty-six;
Orange Free State.....	Seventeen.

These numbers may be increased as provided in the next succeeding section, but shall not, in the case of any Original Province, be diminished until the total number of members of the House of Assembly in respect of the Provinces herein provided for reaches one hundred and

fifty, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period.

34. The number of members to be elected in each Province, as provided in section thirty-three, shall be increased from time to time as may be necessary in accordance with the following provisions:

- (i) The quota of the union shall be obtained by dividing the total number of European male adults in the Union, as ascertained at the census of nineteen hundred and four, by the total number of members of the House of Assembly as constituted at the establishment of the Union:
- (ii) In nineteen hundred and eleven, and every five years thereafter, a census of the European population of the Union shall be taken for the purposes of this Act:
- (iii) After any such census the number of European male adults in each Province shall be compared with the number of European male adults as ascertained at the census of nineteen hundred and four, and, in the case of any Province where an increase is shown, as compared with the census of nineteen hundred and four, equal to the quota of the Union or any multiple thereof, the number of members allotted to such Province in the last preceding section shall be increased by an additional member or an additional number of members equal to such multiple, as the case may be:
- (iv) Notwithstanding anything herein contained, no additional member shall be allotted to any province until the total number of European male adults in such Province exceeds the quota of the Union multiplied



by the number of members allotted to such Province for the time being, and thereupon additional members shall be allotted to such Province in respect only of such excess:

- (v) As soon as the number of members of the House of Assembly to be elected in the Original Provinces in accordance with the preceding subsections reaches the total of one hundred and fifty, such total shall not be further increased unless and until Parliament otherwise provides; and subject to the provisions of the last preceding section the distribution of members among the Provinces shall be such that the proportion between the number of members to be elected at any time in each Province and the number of European male adults in such Province, as ascertained at the last preceding census, shall as far as possible be identical throughout the Union:
- (vi) "Male adults" in this Act shall be taken to mean males of twenty-one years of age or upwards not being members of His Majesty's regular forces on full pay:
- (vii) For the purposes of this Act the number of European male adults, as ascertained at the census of nineteen hundred and four, shall be taken to be—

For the Cape of Good Hope.....	167,546
For Natal.....	34,784
For the Transvaal.....	106,493
For the Orange Free State.....	41,014

35.—(1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person in the province of the Cape of Good Hope who, under the laws existing

in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the Province of the Cape of Good Hope by reason of his race or color only, unless the bill be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

(2) No person who at the passing of any such law is registered as a voter in any Province shall be removed from the register by reason only of any disqualification based on race or color.

36. Subject to the provisions of the last preceding section, the qualifications of parliamentary voters, as existing in the several Colonies at the establishment of the Union, shall be the qualifications necessary to entitle persons in the corresponding Provinces to vote for the election of members of the House of Assembly: Provided that no member of His Majesty's regular forces on full pay shall be entitled to be registered as a voter.

37.—(1) Subject to the provisions of this Act, the laws in force in the Colonies at the establishment of the Union relating to elections for the more numerous Houses of Parliament in such Colonies respectively, the registration of voters, the oaths or declarations to be taken by voters, returning officers, the powers and duties of such officers, the proceedings in connection with elections, election expenses, corrupt and illegal practices, the hearing of election petitions and the proceedings incident thereto, the vacating of seats of members, and the proceedings necessary for filling such vacancies, shall, *mutatis mutandis*, apply to the

elections in the respective Provinces of members of the House of Assembly.

(2) Notwithstanding anything to the contrary in any of the said laws contained, at any general election of members of the House of Assembly, all polls shall be taken on one and the same day in all the electoral divisions throughout the Union, such day to be appointed by the Governor General in Council.

38. Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor in Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the Provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any Province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor in Council of such Colony. In case of death, resignation, or other disability of any of the Commissioners before the

establishment of the Union, the Governor in Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to fill the vacancy. After the establishment of the Union the expenses of the commission shall be defrayed by the Governor General in Council, and any vacancies shall be filled by him.

39. The commission shall divide each Province into electoral divisions, each returning one member.

40.—(1) For the purpose of such division as is in the last preceding section mentioned, the quota of each Province shall be obtained by dividing the total number of voters in the Province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein.

(2) Each Province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of subsection (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the Province.

(3) The Commissioners shall give due consideration to—

- (a) community or diversity of interests;
- (b) means of communication;
- (c) physical features;
- (d) existing electoral boundaries;
- (e) sparsity or density of population;

in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

41. As soon as may be after every quinquennial census, the Governor General in Council shall appoint a commission consisting of three judges of the Supreme Court of



South Africa to carry out any redivision which may have become necessary as between the different electoral divisions in each Province, and to provide for the allocation of the number of members to which such Province may have become entitled under the provisions of this Act. In carrying out such redivision and allocation the commission shall have the same powers and proceed upon the same principles as are by this Act provided in regard to the original division.

42.—(1) The joint commission constituted under section thirty-eight, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor General in Council—

- (a) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division:
- (b) a map or maps showing the electoral divisions into which the Provinces have been divided:
- (c) such further particulars as they consider necessary.

(2) The Governor General in Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.

(3) The Governor General in Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a redivision, the electoral divisions as named and defined shall be the electoral divisions of the Union in the Provinces.

(4) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

43. Any alteration in the number of members of the House of Assembly to be elected in the several Provinces, and any redivision of the Provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the redivision or of any allocation consequent upon such alteration, and not earlier.

44. The qualifications of a member of the House of Assembly shall be as follows:

He must—

- (a) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;
- (b) have resided for five years within the limits of the Union as existing at the time when he is elected;
- (c) be a British subject of European descent.

For the purposes of this section, residence in a Colony before its incorporation in the Union shall be treated as residence in the Union.

45. Every House of Assembly shall continue for five years from the first meeting thereof, and no longer, but may be sooner dissolved by the Governor General.

46. The House of Assembly shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and, as often as the office of Speaker becomes vacant, the House shall again choose a member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing under his hand addressed to the Governor General.

47. Prior to or during the absence of the Speaker, the

House of Assembly may choose a member to perform his duties in his absence.

48. A member may, by writing under his hand addressed to the Speaker, or, if there is no Speaker, or if the Speaker is absent from the Union, to the Governor-General, resign his seat, which shall thereupon become vacant.

49. The presence of at least thirty members of the House of Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers.

50. All questions in the House of Assembly shall be determined by a majority of votes of members present other than the Speaker or the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

### *Both Houses of Parliament*

51. Every Senator and every member of the House of Assembly shall, before taking his seat, make and subscribe before the Governor General, or some person authorized by him, an oath or affirmation of allegiance in the following form:

#### OATH

I, A. B., do swear that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law. So help me God.

#### AFFIRMATION

I, A. B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to

His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law.

52. A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House: Provided that every minister of State who is a member of either House of Parliament shall have the right to sit and speak in the Senate and the House of Assembly, but shall vote only in the House of which he is a member.

53. No person shall be capable of being chosen or of sitting as a Senator or as a member of the House of Assembly who—

- (a) has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of not less than twelve months, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election; or
- (b) is an unrehabilitated insolvent; or
- (c) is of unsound mind, and has been so declared by a competent court: or
- (d) holds any office of profit under the Crown within the Union:

Provided that the following persons shall not be deemed to hold an office of profit under the Crown for the purposes of this subsection:

- (1) a minister of State for the Union;
- (2) a person in receipt of a pension from the Crown;



- (3) an officer or member of His Majesty's naval or military forces on retired or half pay, or an officer or member of the naval or military forces of the Union whose services are not wholly employed by the Union.

54. If a Senator, or member of the House of Assembly—

- (a) becomes subject to any of the disabilities mentioned in the last preceding section; or
- (b) ceases to be qualified as required by law; or
- (c) fails for a whole ordinary session to attend without the special leave of the Senate or the House of Assembly, as the case may be;

his seat shall thereupon become vacant.

55. If any person who is by law incapable of sitting as a Senator or member of the House of Assembly shall, while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified, sit or vote as a member of the Senate or House of Assembly, he shall be liable to a penalty of one hundred pounds for each day on which he shall so sit or vote, to be recovered on behalf of the Treasury of the Union by action in any Superior Court of the Union.

56. Each Senator and each member of the House of Assembly shall, under such rules as shall be framed by Parliament, receive an allowance of four hundred pounds a year, to be reckoned from the date on which he takes his seat: Provided that for every day of the session on which he is absent there shall be deducted from such allowance the sum of three pounds: Provided further that no such allowance shall be paid to a Minister receiving a salary under the Crown or to the President of the Senate

or the Speaker of the House of Assembly. A day of the session shall mean in respect of a member any day during a session on which the House of which he is a member or any committee of which he is a member meets.

57. The powers, privileges, and immunities of the Senate and of the House of Assembly and of the members and committees of each House shall, subject to the provisions of this Act, be such as are declared by Parliament, and until declared shall be those of the House of Assembly of the Cape of Good Hope and of its members and committees at the establishment of the Union.

58. Each House of Parliament may make rules and orders with respect to the order and conduct of its business and proceedings. Until such rules and orders shall have been made the rules and orders of the Legislative Council and House of Assembly of the Cape of Good Hope at the establishment of the Union shall *mutatis mutandis* apply to the Senate and House of Assembly respectively. If a joint sitting of both Houses of Parliament is required under the provisions of this Act, it shall be convened by the Governor General by message to both Houses. At any such joint sitting the Speaker of the House of Assembly shall preside and the rules of the House of Assembly shall, as far as practicable, apply.

### *Powers of Parliament*

59. Parliament shall have full power to make laws for the peace, order, and good government of the Union.

60.—(1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a bill shall not be taken to appropriate

revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(2) The Senate may not amend any bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

(3) The Senate may not amend any bill so as to increase any proposed charges or burden on the people.

61. Any bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

62. The House of Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor General during the session in which such vote, resolution, address, or bill is proposed.

63. If the House of Assembly passes any bill and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the bill with or without any amendments which have been made or agreed to by the Senate and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, the Governor General may during that session convene a joint sitting of the members of the Senate and House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and such

amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the bill with the amendments, if any, is affirmed by a majority of the members of the Senate and House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any bill dealing with the appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such bill.

64. When a bill is presented to the Governor General for the King's assent, he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf of the King, that he assents in the King's name, or that he withholds assent, or that he reserves the bill for the signification of the King's pleasure. All bills repealing or amending this section or any of the provisions of Chapter IV. under the heading "House of Assembly", and all bills abolishing provincial councils or abridging the powers conferred on provincial councils under section eighty-five, otherwise than in accordance with the provisions of that section shall be so reserved. The Governor General may return to the House in which it originated any bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

65. The King may disallow any law within one year after it has been assented to by the Governor General, and such disallowance, on being made known by the Governor General by speech or message to each of the Houses of



Parliament or by proclamation, shall annul the law from the day when the disallowance is so made known.

66. A bill reserved for the King's pleasure shall not have any force unless and until, within one year from the day on which it was presented to the Governor General for the King's assent, the Governor General makes known by speech or message to each of the Houses of Parliament or by proclamation that it has received the King's assent.

67. As soon as may be after any law shall have been assented to in the King's name by the Governor General, or having been reserved for the King's pleasure shall have received his assent, the Clerk of the House of Assembly shall cause two fair copies of such law, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor General), to be enrolled of record in the office of the registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies thus deposited that signed by the Governor General shall prevail.

## V.—THE PROVINCES

### *Administrators*

68.—(1) In each Province there shall be a chief executive officer appointed by the Governor General in Council, who shall be styled the administrator of the Province, and in whose name all executive acts relating to provincial affairs therein shall be done.

(2) In the appointment of the administrator of any Province, the Governor General in Council shall, as far as

practicable, give preference to persons resident in such Province.

(3) Such administrator shall hold office for a term of five years and shall not be removed before the expiration thereof except by the Governor General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(4) The Governor General in Council may from time to time appoint a deputy administrator to execute the office and functions of the administrator during his absence, illness or other inability.

69. The salaries of the administrators shall be fixed and provided by Parliament, and shall not be reduced during their respective terms of office.

### *Provincial Councils*

70.—(1) There shall be a Provincial Council in each Province consisting of the same number of members as are elected in the Province for the House of Assembly; Provided that, in any province whose representatives in the House of Assembly shall be less than twenty-five in number, the Provincial Council shall consist of twenty-five members.

(2) Any person qualified to vote for the election of members of the Provincial Council shall be qualified to be a member of such Council.

71.—(1) The members of the Provincial Council shall be elected by the persons qualified to vote for the election of members of the House of Assembly in the Province

voting in the same electoral divisions as are delimited for the election of members of the House of Assembly: Provided that, in any Province in which less than twenty-five members are elected to the House of Assembly, the delimitation of the electoral divisions, and any necessary reallocation of members or adjustment of electoral divisions, shall be effected by the same commission and on the same principles as are prescribed in regard to the electoral divisions for the House of Assembly.

(2) Any alteration in the number of members of the Provincial Council, and any redivision of the Province into electoral divisions, shall come into operation at the next general election for such Council held after the completion of such redivision, or of any allocation consequent upon such alteration, and not earlier.

(3) The election shall take place at such times as the administrator shall by proclamation direct, and the provisions of section thirty-seven applicable to the election of members of the House of Assembly shall *mutatis mutandis* apply to such election.

72. The provisions of sections fifty-three, fifty-four, and fifty-five, relative to members of the House of Assembly shall *mutatis mutandis* apply to members of the Provincial Councils: Provided that any member of a Provincial Council who shall become a member of either House of Parliament shall thereupon cease to be a member of such Provincial council.

73. Each Provincial Council shall continue for three years from the date of its first meeting, and shall not be subject to dissolution save by effluxion of time.

74. The administrator of each Province shall by proclamation fix such times for holding the sessions of the Provincial Council as he may think fit, and may from time to

time prorogue such Council: Provided that there shall be a session of every Provincial Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the Council in one session and its first sitting in the next session.

75. The Provincial Council shall elect from among its members a chairman, and may make rules for the conduct of its proceedings. Such rules shall be transmitted by the administrator to the Governor General, and shall have full force and effect unless and until the Governor General in Council shall express his disapproval thereof in writing addressed to the administrator.

76. The members of the Provincial Council shall receive such allowances as shall be determined by the Governor General in Council.

77. There shall be freedom of speech in the Provincial Council, and no member shall be liable to any action or proceeding in any court by reason of his speech or vote in such Council.

### *Executive Committees*

78.—(1) Each Provincial Council shall at its first meeting after any general election elect from among its members, or otherwise, four persons to form with the administrator, who shall be chairman, an Executive Committee for the Province. The members of the Executive Committee other than the administrator shall hold office until the election of their successors in the same manner.

(2) Such members shall receive such remuneration as the Provincial Council, with the approval of the Governor General in Council, shall determine.

(3) A member of the Provincial Council shall not be disqualified from sitting as a member by reason of his



having been elected as a member of the Executive Committee.

(4) Any casual vacancy arising in the Executive Committee shall be filled by election by the Provincial Council if then in session or, if the Council is not in session, by a person appointed by the Executive Committee to hold office temporarily pending an election by the Council.

79. The administrator and any other member of the Executive Committee of a Province, not being a member of the Provincial Council, shall have the right to take part in the proceedings of the Council, but shall not have the right to vote.

80. The Executive Committee shall on behalf of the Provincial Council carry on the administration of provincial affairs. Until the first election of members to serve on the Executive Committee, such administration shall be carried on by the administrator. Whenever there are not sufficient members of the Executive Committee to form a quorum according to the rules of the Committee, the administrator shall, as soon as practicable, convene a meeting of the Provincial Council for the purpose of electing members to fill the vacancies, and until such election the administrator shall carry on the administration of provincial affairs.

81. Subject to the provisions of this Act, all powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in or exercised by the Governor or the Governor in Council, or any minister of the Colony, shall after such establishment be vested in the Executive Committee of the Province so far as such powers, authorities, and functions relate to matters in respect of which the Provincial Council is competent to make ordinances.

82. Questions arising in the Executive Committee shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the administrator shall have also a casting vote. Subject to the approval of the Governor General in Council, the Executive Committee may make rules for the conduct of its proceedings.

83. Subject to the provisions of any law passed by Parliament regulating the conditions of appointment, tenure of office, retirement and superannuation of public officers, the Executive Committee shall have power to appoint such officers as may be necessary, in addition to officers assigned to the Province by the Governor General in Council under the provisions of this Act, to carry out the services entrusted to them and to make and enforce regulations for the organization and discipline of such officers.

84. In regard to all matters in respect of which no powers are reserved or delegated to the Provincial Council, the administrator shall act on behalf of the Governor General in Council when required to do so, and in such matters the administrator may act without reference to the other members of the Executive Committee.

### *Powers of Provincial Councils*

85. Subject to the provisions of this Act and the assent of the Governor General in Council as hereinafter provided, the Provincial Council may make ordinances in relation to matters coming within the following classes of subjects (that is to say) :

- (i) Direct taxation within the Province in order to raise Council and in accordance with regulations to be framed by Parliament.
- (ii) The borrowing of money on the sole credit of the

Province with the consent of the Governor General in a revenue for Provincial purposes.

- (iii) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides:
- (iv) Agriculture to the extent and subject to the conditions to be defined by Parliament:
- (v) The establishment, maintenance, and management of hospitals and charitable institutions:
- (vi) Municipal institutions, divisional councils, and other local institutions of a similar nature:
- (vii) Local works and undertakings within the Province, other than railways and harbors and other than such works as extend beyond the borders of the Province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the Provincial Council or otherwise:
- (viii) Roads, outspans, ponts, and bridges, other than bridges connecting two Provinces:
- (ix) Markets and pounds:
- (x) Fish and game preservation:
- (xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section:
- (xii) Generally all matters which, in the opinion of the Governor General in Council, are of a merely local or private nature in the Province:
- (xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the Provincial Council.

86. Any ordinance made by a Provincial Council shall

have effect in and for the Province as long and as far only as it is not repugnant to any Act of Parliament.

87. A Provincial Council may recommend to Parliament the passing of any law relating to any matter in respect of which such Council is not competent to make ordinances.

88. In regard to any matter which requires to be dealt with by means of a private Act of Parliament, the Provincial Council of the Province to which the matter relates may, subject to such procedure as shall be laid down by Parliament, take evidence by means of a select committee or otherwise for and against the passing of such law, and, upon receipt of a report from such Council, together with the evidence upon which it is founded, Parliament may pass such Act without further evidence being taken in support thereof.

89. A provincial revenue fund shall be formed in every Province, into which shall be paid all revenues raised by or accruing to the Provincial Council and all moneys paid over by the Governor General in Council to the Provincial Council. Such fund shall be appropriated by the Provincial Council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor General in Council for particular purposes, then for such purpose, but no such ordinance shall be passed by the Provincial Council unless the administrator shall have first recommended to the Council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the administrator: Provided that, until the expiration of one month after the first meeting of the Provincial Council,



the administrator may expend such moneys as may be necessary for the services of the Province.

90. When a proposed ordinance has been passed by a Provincial Council it shall be presented by the administrator to the Governor General in Council for his assent. The Governor General in Council shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until, within one year from the day on which it was presented to the Governor General in Council, he makes known by proclamation that it has received his assent.

91. An ordinance assented to by the Governor General in Council and promulgated by the administrator shall, subject to the provisions of this Act, have the force of law within the Province. The administrator shall cause two fair copies of every such ordinance, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor General), to be enrolled of record in the office of the registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of such ordinance, and, in case of conflict between the two copies thus deposited, that signed by the Governor General shall prevail.

### *Miscellaneous*

92.—(1) In each Province there shall be an auditor of accounts to be appointed by the Governor General in Council.

(2) No such auditor shall be removed from office except by the Governor General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, and, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(3) Each such auditor shall receive out of the Consolidated Revenue Fund such salary as the Governor General in Council, with the approval of Parliament, shall determine.

(4) Each such auditor shall examine and audit the accounts of the Province to which he is assigned subject to such regulations and orders as may be framed by the Governor General in Council and approved by Parliament, and no warrant signed by the administrator authorizing the issuing of money shall have effect unless countersigned by such auditor.

93. Notwithstanding anything in this Act contained, all powers, authorities, and functions lawfully exercised at the establishment of the Union by divisional or municipal councils, or any other duly constituted local authority, shall be and remain in force until varied or withdrawn by Parliament or by a Provincial Council having power in that behalf.

94. The seats of provincial government shall be—

For the Cape of Good Hope...Cape Town.

For Natal.....Pietermaritzburg.

For the Transvaal.....Pretoria.

For the Orange Free State...Bloemfontein

## VI.—THE SUPREME COURT OF SOUTH AFRICA

95. There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the provinces.

96. There shall be an Appellate Division of the Supreme Court of South Africa, consisting of the Chief Justice of South Africa, two ordinary judges of appeal, and two additional judges of appeal. Such additional judges of appeal shall be assigned by the Governor General in Council to the Appellate Division from any of the provincial or local divisions of the Supreme Court of South Africa, but shall continue to perform their duties as judges of their respective divisions when their attendance is not required in the Appellate Division.

97. The Governor General in Council may, during the absence, illness, or other incapacity of the Chief Justice of South Africa, or of any ordinary or additional judge of appeal, appoint any other judge of the Supreme Court of South Africa to act temporarily as such Chief Justice, ordinary judge of appeal, or additional judge of appeal, as the case may be.

98.—(1) The several supreme courts of the Cape of Good Hope, Natal, and the Transvaal, and the High Court of the Orange River Colony shall, on the establishment of the Union, become provincial divisions of the Supreme Court of South Africa within their respective provinces, and shall each be presided over by a judge-president.

(2) The court of the eastern districts of the Cape of Good Hope, the High Court of Griqualand, the High

Court of Witwatersrand, and the several circuit courts, shall become local divisions of the Supreme Court of South Africa within the respective areas of their jurisdiction as existing at the establishment of the Union.

(3) The said provincial and local divisions, referred to in this Act as superior courts, shall, in addition to any original jurisdiction exercised by the corresponding courts of the Colonies at the establishment of the Union, have jurisdiction in all matters—

(a) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party:

(b) in which the validity of any provincial ordinance shall come into question.

(4) Unless and until Parliament shall otherwise provide, the said superior courts shall *mutatis mutandis* have the same jurisdiction in matters affecting the validity of elections of members of the House of Assembly and Provincial Councils as the corresponding courts of the Colonies have at the establishment of the Union in regard to parliamentary elections in such Colonies respectively.

99. All judges of the supreme courts of the Colonies, including the High Court of the Orange River Colony, holding office at the establishment of the Union shall on such establishment become judges of the Supreme Court of South Africa, assigned to the divisions of the supreme court in the respective Provinces, and shall retain all such rights in regard to salaries and pensions as they may possess at the establishment of the Union. The Chief Justices of the Colonies holding office at the establishment of the Union shall on such establishment become the Judges-President of the divisions of the supreme court in the respective Provinces, but shall so long as they hold that



office retain the title of Chief Justice of their respective Provinces.

100. The Chief Justice of South Africa, the ordinary judges of appeal, and all other judges of the Supreme Court of South Africa to be appointed after the establishment of the Union, shall be appointed by the Governor General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

101. The Chief Justice of South Africa and other judges of the Supreme Court of South Africa shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehavior or incapacity.

102. Upon any vacancy occurring in any division of the Supreme Court of South Africa, other than the Appellate Division, the Governor General in Council may, in case he shall consider that the number of judges of such court may with advantage to the public interest be reduced, postpone filling the vacancy until Parliament shall have determined whether such reduction shall take place.

103. In every civil case in which, according to the law in force at the establishment of the Union, an appeal might have been made to the supreme court of any of the Colonies from a superior court in any of the Colonies, or from the High Court of Southern Rhodesia, the appeal shall be made only to the Appellate Division, except in cases of orders or judgments given by a single judge, upon applications by way of motion or petition or on summons for provisional sentence or judgments as to costs only, which by law are left to the discretion of the court. The appeal from any such orders or judgments, as well as

any appeal in criminal cases from any such superior court, or the special reference by any such court of any point of law in a criminal case, shall be made to the provincial division corresponding to the court which before the establishment of the Union would have had jurisdiction in the matter. There shall be no further appeal against any judgment given on appeal by such provincial division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

104. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from the supreme court of any of the Colonies or from the High Court of the Orange River Colony to the King in Council, the appeal shall be made only to the Appellate Division: Provided that the right of appeal in any civil suit shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in such suit.

105. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a superior court in any of the Colonies, the appeal shall be made to the corresponding division of the Supreme Court of South Africa; but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

106. There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from

the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but bills containing any such limitation shall be reserved by the Governor General for the signification of His Majesty's pleasure: Provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890.

107. The Chief Justice of South Africa and the ordinary judges of appeal may, subject to the approval of the Governor General in Council, make rules for the conduct of the proceedings of the Appellate Division and prescribing the time and manner of making appeals thereto. Until such rules have been promulgated, the rules in force in the Supreme Court of the Cape of Good Hope at the establishment of the Union shall *mutatis mutandis* apply.

108. The Chief Justice and other judges of the Supreme Court of South Africa may, subject to the approval of the Governor General in Council, frame rules for the conduct of the proceedings of the several provincial and local divisions. Until such rules shall have been promulgated, the rules in force at the establishment of the Union in the respective courts which become divisions of the Supreme Court of South Africa shall continue to apply therein.

109. The Appellate Division shall sit in Bloemfontein, but may from time to time for the convenience of suitors hold its sittings at other places within the Union.

110. On the hearing of appeals from a court consisting of two or more judges, five judges of the Appellate Division shall form a quorum, but, on the hearing of appeals

from a single judge, three judges of the Appellate Division shall form a quorum. No judge shall take part in the hearing of any appeal against the judgment given in a case heard before him.

111. The process of the Appellate Division shall run throughout the Union, and all its judgments or orders shall have full force and effect in every province, and shall be executed in like manner as if they were original judgments or orders of the provincial division of the Supreme Court of South Africa in such a province.

112. The registrar of every provincial division of the Supreme Court of South Africa, if thereto requested by any party in whose favor any judgment or order has been given or made by any other division, shall, upon the deposit with him of an authenticated copy of said judgment or order and on proof that the same remains unsatisfied, issue a writ or other process for the execution of such judgment or order, and thereupon such writ or other process shall be executed in like manner as if it had been originally issued from the division of which he is registrar.

113. Any provincial or local division of the Supreme Court of South Africa to which it may be made to appear that any civil suit pending therein may be more conveniently or fitly heard or determined in another division may order the same to be removed to such other division, and thereupon such last-mentioned division may proceed with such suit in like manner as if it had been originally commenced therein.

114. The Governor General in Council may appoint a registrar of the Appellate Division and such other officers thereof as shall be required for the proper dispatch of the business thereof.

115.—(1) The laws regulating the admission of advo-



cates and attorneys to practise before any superior court of any of the Colonies shall *mutatis mutandis* apply to the admission of advocates and attorneys to practise in the corresponding division of the Supreme Court of South Africa.

(2) All advocates and attorneys entitled at the establishment of the Union to practise in any superior court of any of the Colonies shall be entitled to practise as such in the corresponding division of the Supreme Court of South Africa.

(3) All advocates and attorneys entitled to practise before any provincial division of the Supreme Court of South Africa shall be entitled to practise before the Appellate Division.

116. All suits, civil or criminal, pending in any superior court of any of the Colonies at the establishment of the Union shall stand removed to the corresponding division of the Supreme Court of South Africa, which shall have jurisdiction to hear and determine the same, and all judgments and orders of any superior court of any of the Colonies given or made before the establishment of the Union shall have the same force and effect as if they had been given or made by the corresponding division of the Supreme Court of South Africa. All appeals to the King in Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act had not been passed.

## VII.—FINANCE AND RAILWAYS

117. All revenues, from whatever source arising, over which the several Colonies have at the establishment of the Union power of appropriation, shall vest in the Governor General in Council. There shall be formed a Railway and

Harbor Fund into which shall be paid all revenues raised or received by the Governor General in Council from the administration of the railways, ports, and harbors, and such fund shall be appropriated by Parliament to the purposes of the railways, ports, and harbors in the manner prescribed by this Act. There shall also be formed a Consolidated Revenue Fund, into which shall be paid all other revenues raised or received by the Governor General in Council, and such fund shall be appropriated by Parliament for the purposes of the Union in the manner prescribed by this Act, and subject to the charges imposed thereby.

118. The Governor General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to institute an inquiry into the financial relations which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province—

- (a) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908-9, as voted by the Legislature of the corresponding Colony during the year nineteen hundred and eight;
- (b) such further sums as the Governor General in Council may consider necessary for the due performance of the services and duties assigned to the provinces respectively.

Until such inquiry shall be completed and Parliament

shall have made other provision, the Executive Committees in the several provinces shall annually submit estimates of their expenditures for the approval of the Governor General in Council, and no expenditure shall be incurred by any Executive Committee which is not provided for in such approved estimates.

119. The annual interest of the public debts of the Colonies and any sinking funds constituted by law at the establishment of the Union shall form a first charge on the Consolidated Revenue Fund.

120. No money shall be withdrawn from the Consolidated Revenue Fund or the Railway and Harbor Fund except under appropriation made by law. But, until the expiration of two months after the first meeting of Parliament, the Governor General in Council may draw therefrom and expend such moneys as may be necessary for the public service, and for railway and harbor administration respectively.

121. All stocks, cash, bankers' balances, and securities for money belonging to each of the Colonies at the establishment of the Union shall be the property of the Union: Provided that the balances of any funds raised at the establishment of the Union by law for any special purposes in any of the Colonies shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided.

122. Crown lands, public works, and all property throughout the Union, movable or immovable, and all rights of whatever description belonging to the several Colonies at the establishment of the Union, shall vest in the Governor General in Council subject to any debt or liability specifically charged thereon.

123. All rights in and to mines and minerals, and all

rights in connection with the searching for, working for, or disposing of, minerals or precious stones, which at the establishment of the Union are vested in the Government of any of the Colonies, shall on such establishment vest in the Governor General in Council.

124. The Union shall assume all debts and liabilities of the Colonies existing at its establishment, subject, notwithstanding any other provision contained in this Act, to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund, and other charges conferred on the creditors of any of the Colonies, and may, subject to such conditions and rights, convert, renew, or consolidate such debts.

125. All ports, harbors, and railways belonging to the several Colonies at the establishment of the Union shall from the date thereof vest in the Governor General in Council. No railway for the conveyance of public traffic and no port, harbor, or similar work, shall be constructed without the sanction of Parliament.

126. Subject to the authority of the Governor General in Council, the control and management of the railways, ports, and harbors of the Union shall be exercised through a board consisting of not more than three commissioners, who shall be appointed by the Governor General in Council, and a minister of State, who shall be chairman. Each commissioner shall hold office for a period of five years, but may be reappointed. He shall not be removed before the expiration of his period of appointment, except by the Governor General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the re-



moval, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session. The salaries of the commissioners shall be fixed by Parliament and shall not be reduced during their respective terms of office.

127. The railways, ports, and harbors of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union. So far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital not being capital contributed out of railway or harbor revenue, and not including any sums payable out of the Consolidated Revenue Fund in accordance with the provisions of sections one hundred and thirty and one hundred and thirty one. The amount of interest due on such capital invested shall be paid over from the Railway and Harbor Fund into the Consolidated Revenue Fund. The Governor General in Council shall give effect to the provisions of this section as soon as and at such time as the necessary administrative and financial arrangements can be made, but in any case shall give full effect to them before the expiration of four years from the establishment of the Union. During such period, if the revenues accruing to the Consolidated Revenue Fund are insufficient to provide for the general service of the Union, and if the earnings accruing to the Railway and Harbor Fund are in excess of the outlays specified herein, Parliament may by law appropriate such excess or any part thereof towards the general expenditure of the

Union, and all sums so appropriated shall be paid over to the Consolidated Revenue Fund.

128. Notwithstanding anything to the contrary in the last preceding section, the Board may establish a fund out of railway and harbor revenue to be used for maintaining, as far as may be, uniformity of rates notwithstanding fluctuations in traffic.

129. All balances standing to the credit of any fund established in any of the Colonies for railway or harbor purposes at the establishment of the Union shall be under the sole control and management of the Board, and shall be deemed to have been appropriated by Parliament for the respective purposes for which they have been provided.

130. Every proposal for the construction of any port or harbor works or of any line of railway, before being submitted to Parliament, shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of railway should or should not be constructed. If any such works or line shall be constructed contrary to the advice of the Board, and if the Board is of opinion that the revenue derived from the operation of such works or line will be insufficient to meet the costs of working and maintenance, and of interest on the capital invested therein, it shall frame an estimate of the annual loss which, in its opinion, will result from such operation. Such estimate shall be examined by the Controller and Auditor General, and when approved by him the account thereof shall be paid over annually from the Consolidated Revenue Fund to the Railway and Harbor Fund: Provided that, if in any year the actual loss incurred, as calculated by the Board and certified by the Controller and Auditor General, is less than the estimate framed by the Board, the amount paid over in respect of that year

shall be reduced accordingly so as not to exceed the actual loss incurred. In calculating the loss arising from the operation of any such work or line, the Board shall have regard to the value of any contributions of traffic to other parts of the system which may be due to the operation of such work or line.

131. If the Board shall be required by the Governor General in Council or under any Act of Parliament or resolution of both Houses of Parliament to provide any services or facilities either gratuitously or at a rate of charge which is insufficient to meet the costs involved in the provision of such services or facilities, the Board shall at the end of each financial year present to Parliament an account approved by the Controller and Auditor General, showing, as nearly as can be ascertained, the amount of the loss incurred by reason of the provision of such services and facilities, and such amount shall be paid out of the Consolidated Revenue Fund to the Railway and Harbor Fund.

132. The Governor General in Council shall appoint a Controller and Auditor General who shall hold office during good behavior: provided that he shall be removed by the Governor General in Council on an address praying for such removal presented to the Governor General by both Houses of Parliament: provided further that when Parliament is not in session the Governor General in Council may suspend such officer on the ground of incompetence or misbehavior; and, when and so often as such suspension shall take place, a full statement of the circumstances shall be laid before both Houses of Parliament within fourteen days after the commencement of its next session; and, if an address shall at any time during the session of Parliament be presented to the Governor General

by both Houses praying for the restoration to office of such officer, he shall be restored accordingly; and if no such address be presented the Governor General shall confirm such suspension and shall declare the office of Controller and Auditor General to be, and it shall thereupon become, vacant. Until Parliament shall otherwise provide, the Controller and Auditor General shall exercise such powers and functions and undertake such duties as may be assigned to him by the Governor General in Council by regulations framed in that behalf.

133. In order to compensate Pietermaritzburg and Bloemfontein for any loss sustained by them in the form of diminution of prosperity or decreased ratable value by reason of their ceasing to be the seats of government of their respective colonies, there shall be paid from the Consolidated Revenue Fund for a period not exceeding twenty-five years to the municipal councils of such towns a grant of two per centum per annum on their municipal debts, as existing on the thirty-first day of January, nineteen hundred and nine, and as ascertained by the Controller and Auditor General. The Commission appointed under section one hundred and eighteen shall, after due inquiry, report to the Governor General in Council what compensation should be paid to the municipal councils of Cape Town and Pretoria for the losses, if any, similarly sustained by them. Such compensation shall be paid out of the Consolidated Revenue Fund for a period not exceeding twenty-five years, and shall not exceed one per centum per annum on the respective municipal debts of such towns as existing on the thirty-first day of January nineteen hundred and nine, and as ascertained by the Controller and Auditor General. For the purposes of this section Cape Town shall be deemed to include the municipalities of Cape



Town, Green Point, and Sea Point, Woodstock, Mowbray, and Rondebosch, Claremont, and Wynberg, and any grant made to Cape Town shall be payable to the councils of such municipalities in proportion to their respective debts. One half of any such grants shall be applied to the redemption of the municipal debts of such towns respectively. At any time after the tenth annual grant has been paid to any of such towns the Governor General in Council, with the approval of Parliament, may after due inquiry withdraw or reduce the grant to such town.

### VIII.—GENERAL

134. The election of Senators and of members of the executive committees of the Provincial Councils as provided in this Act shall, whenever such election is contested, be according to the principle of proportional representation, each voter having one transferable vote. The Governor General in Council, or, in the case of the first election of the Senate, the Governor in Council of each of the Colonies, shall frame regulations prescribing the methods of voting and of transferring and counting votes and the duties of returning officers in connection therewith, and such regulations or any amendments thereof after being duly promulgated shall have full force and effect unless and until Parliament shall otherwise provide.

135. Subject to the provisions of this Act, all laws in force in the several Colonies at the establishment of the Union shall continue in force in the respective Province until repealed or amended by Parliament, or by the Provincial Councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several Colonies at the establish-

ment of the Union shall continue as if the Union had not been established.

136. There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of custom and of excise leviable under the laws existing in any of the Colonies at the establishment of the Union shall remain in force.

137. Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

138. All persons who have been naturalized in any of the Colonies shall be deemed to be naturalized throughout the Union.

139. The administration of justice throughout the Union shall be under the control of a Minister of State, in whom shall be vested all powers, authorities, and functions which shall at the establishment of the Union be vested in the Attorneys General of the Colonies, save and except all powers, authorities, and functions relating to the prosecution of crimes and offences, which shall in each Province be vested in an officer to be appointed by the Governor General in Council, and styled the Attorney General of the Province, who shall also discharge such other duties as may be assigned to him by the Governor General in Council: Provided that in the Province of Good Hope the Solicitor General for the Eastern Districts and the Crown Prosecutor for Griqualand West shall respectively continue to exercise the powers and duties by

law vested in them at the time of the establishment of the Union.

140. Subject to the provisions of the next succeeding section, all officers of the public service of the Colonies shall at the establishment of the Union become officers of the Union.

141.—(1) As soon as possible after the establishment of the Union, the Governor General in Council shall appoint a public service commission to make recommendations for such reorganization and readjustment of the Departments of the public service as may be necessary. The commission shall also make recommendations in regard to the assignment of officers to the several Provinces.

(2) The Governor General in Council may after such commission has reported assign from time to time to each Province such officers as may be necessary for the proper discharge of the services reserved or delegated to it, and such officers on being so assigned shall become officers of the Province. Pending the assignment of such officers, the Governor General in Council may place at the disposal of the Provinces the services of such officers of the Union as may be necessary.

(3) The provisions of this section shall not apply to any service or department under the control of the Railway and Harbor Board, or to any person holding office under the Board.

142. After the establishment of the Union the Governor General in Council shall appoint a permanent public service commission with such powers and duties relating to the appointment, discipline, retirement, and superannuation of public officers as Parliament shall determine.

143. Any officer of the public service of any of the Colonies at the establishment of the Union who is not

retained in the service of the Union or assigned to that of a Province shall be entitled to receive such pension, gratuity, or other compensation as he would have received in like circumstances if the Union had not been established.

144. Any officer of the public service of any of the Colonies at the establishment of the Union who is retained in the service of the Union or assigned to that of a Province shall retain all his existing and accruing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Union had not been established.

145. The services of officers in the public service of any of the Colonies at the establishment of the Union shall not be dispensed with by reason of their want of knowledge of either the English or Dutch language.

146. Any permanent officer of the Legislature of any of the Colonies who is not retained in the service of the Union, or assigned to that of any Province, and for whom no provision shall have been made by such Legislature, shall be entitled to such pension, gratuity, or compensation as Parliament may determine.

147. The control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor General in Council, who shall exercise all special powers in regard to native administration hitherto vested in the Governors of the Colonies or exercised by them as supreme chiefs, and any lands vested in the Governor or Governor and Executive Council of any Colony for the purpose of reserves for native locations shall vest in the Governor General in Council, who shall exercise all special powers in



relation to such reserves as may hitherto have been exercisable by any such Governor or Governor and Executive Council, and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the Colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament.

148.—(1) All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve upon the Union at its establishment.

(2) The provisions of the railway agreement between the Governments of the Transvaal, the Cape of Good Hope, and Natal, dated the second of February, nineteen hundred and nine, shall, as far as practicable, be given effect to by the Government of the Union.

#### IX.—NEW PROVINCES AND TERRITORIES

149. Parliament may alter the boundaries of any Province, divide a Province into two or more Provinces, or form a new Province out of Provinces within the Union, on the petition of the Provincial Council of every Province whose boundaries are affected thereby.

150. The King, with the advice of the Privy Council, may on addresses from the Houses of Parliament of the Union admit into the Union the territories administered by the British South Africa Company on such terms and conditions as to representation and otherwise in each case as are expressed in the addresses and approved by the King, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

151. The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor General in Council may undertake the government of such territory upon the terms and conditions embodied in the schedule to this Act.

#### X.—AMENDMENT OF ACT

152. Parliament may by law repeal or alter any of the provisions of this Act: Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered: And provided further that no repeal or alteration of the provisions contained in this section, or in sections thirty-three and thirty-four (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period), or in sections thirty-five and one hundred and thirty-seven, shall be valid unless the bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of the members of both Houses. A bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

## SCHEDULE

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor General in Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the commission shall be appointed by the Governor General in Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall

not be qualified to become, or to be, members of either House of Parliament. One of the members of the commission shall be appointed by the Governor General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman, shall preside at all meetings of the commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the commission shall consist of four or more members, three of them shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall



convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor General in Council, whose decision in the matter shall be final.

10. When the recommendations of the commission have not been accepted by the Governor General in Council, or action not in accordance with their advice has been taken by the Governor General in Council, the Prime Minister, if thereto requested by the commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor General in Council shall transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor General in Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him,

prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary of the commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor General in Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually toward the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Govern-

ment to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of the transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total costs of such services than that which the amount payable under paragraph 12 of this schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total

customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the commission shall be entitled to such pensions of superannuation allowances as the Governor General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor General in Council, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this Schedule shall be reserved for the significance of His Majesty's pleasure.



PART VI  
THE DOMINIONS

## HISTORICAL RÉSUMÉ

By the British Nationality and Status of Aliens Act of 1914 all of the Dominions were affected and the Dominions were recognized *eo nomine* for purposes of future legislation.

# BRITISH NATIONALITY AND STATUS OF ALIENS ACT

[4 & 5 George V, cap. 17]

1914

*An Act to consolidate and amend the Enactments relating to British nationality and the status of Aliens.*

BE IT ENACTED by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## PART I.—*Natural-born British Subjects*

1.—(1) The following persons shall be deemed to be natural-born British subjects, namely:

. . . . .

## PART II.—*Naturalization of Aliens*

2.—(1) The Secretary of State may grant a certificate of naturalization to an alien who makes an application for the purpose, and satisfies the Secretary of State—

. . . . .

8.—(1) The Government of any British possession shall have the same power to grant a certificate of naturalization as the Secretary of State has under this Act, and the provisions of this Act as to the grant and revocation of such a certificate shall apply accordingly, with the substitution of the Government of the possession for the Secretary of State, and the possession for the United

Kingdom, and also, in a possession where any language is recognized as on an equality with the English language, with the substitution of the English language or that language for the English language:

Provided that in any British possession other than British India and a Dominion specified in the First schedule to this Act, the powers of the government of the possession under this section shall be exercised by the Governor or a person acting under his authority, but shall be subject in each case to the approval of the Secretary of State, and any certificate proposed to be granted shall be submitted to him for his approval.

(2) Any certificate of naturalization granted under this section shall have the same effect as a certificate of naturalization granted by the Secretary of State under this Act.

9.—(1) This part of this Act shall not, nor shall any certificate of naturalization granted thereunder, have effect within any of the Dominions specified in the first schedule to this Act, unless the Legislature of that Dominion adopts this part of this Act.

(2) Where the Legislature of any such Dominion has adopted this part of this Act, the Government of the Dominion shall have the like powers to make regulations with respect to certificates of naturalization and to oaths of allegiance as are conferred by this Act on the Secretary of State.

(3) The Legislature of any such Dominion which adopts this part of this Act may provide how and by what Department of the Government the powers conferred by this part of this Act on the Government of a British possession are to be exercised.

(4) The Legislature of any such Dominion may at any



time rescind the adoption of this part of this Act, provided that no such rescission shall prejudicially affect any legal rights existing at the time of such rescission.

. . . . .

## SCHEDULES

FIRST SCHEDULE.—*List of Dominions*

The Dominion of Canada.

The Commonwealth of Australia (including for the purposes of this Act the territory of Papua and Norfolk Island).

The Dominion of New Zealand.

The Union of South Africa.

Newfoundland.

. . . . .



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[Abbreviations: A., Commonwealth of Australia; C., Dominion of Canada; SA., Union of South Africa; N., Newfoundland; NZ., New Zealand.]

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